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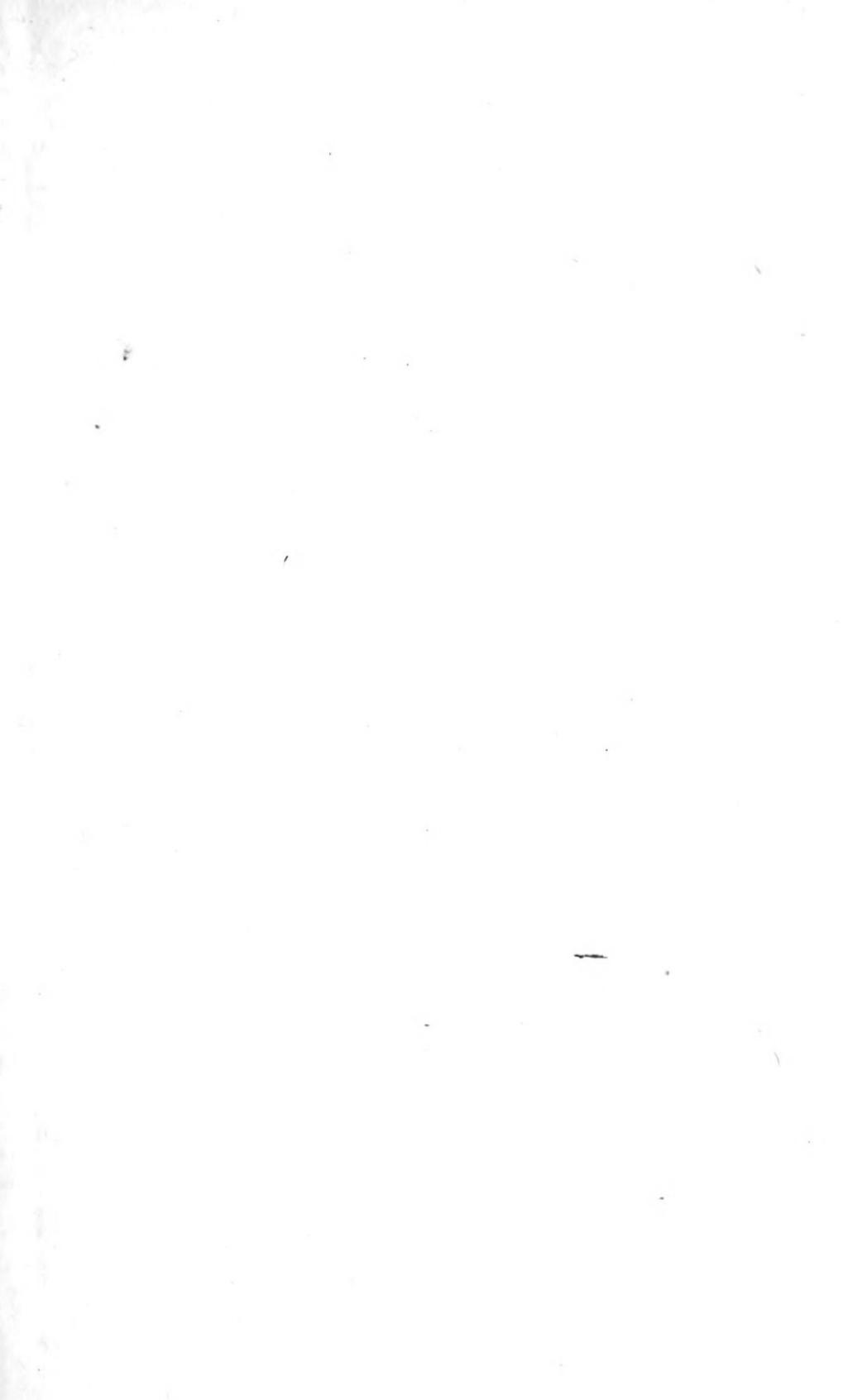
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A COMPILATION  
OF  
WAREHOUSE LAWS  
AND DECISIONS

CONTAINING THE STATUTES OF EACH OF THE STATES AND  
TERRITORIES PERTAINING TO WAREHOUSEMEN, TO-  
GETHER WITH A DIGEST OF THE DECISIONS OF  
THE STATE AND FEDERAL COURTS, IN ALL  
CASES AFFECTING WAREHOUSEMEN.  
WITH AN ANALYTICAL INDEX.

BY  
**BARRY MOHUN, LL. M.**  
OF THE BAR OF THE DISTRICT OF COLUMBIA AND OF THE STATE OF NEW YORK.

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1904.

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BY AMERICAN WAREHOUSEMEN'S ASSOCIATION.

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The compilation of this volume was undertaken by the American Warehousemen's Association, on the suggestion of the Chairman of its Committee on Laws and Legislation, as an aid to that Committee in the formulation of such a code of laws for the government of the warehouse business as might be offered to the several legislatures of this country with a fair prospect of general adoption. When the work was completed it proved so valuable that it was determined to issue it in permanent form to the legal profession and to the warehousemen of this country as an authoritative statement of the present status of warehouse jurisprudence. The Association takes this occasion to place on record its high appreciation of the disinterested and untiring efforts of the Chairman of its Committee on Laws and Legislation, Mr. Albert M. Read, of Washington, D. C., in making the issue of this volume possible, and to thank the other members of that Committee, Messrs. W. H. Gibson, of New York City, D. E. Knowlton, of Buffalo, N. Y., W. G. Coldeway, of Cincinnati, Ohio, R. M. Winans, of New York City, and Philip Godley, of Philadelphia, Pa., for their hearty co-operation in the work.

AMERICAN WAREHOUSEMEN'S ASSOCIATION  
BY WILLIAM T. ROBINSON, PRESIDENT,  
AND WALTER C. REID, SECRETARY.



## PREFACE.

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The arrangement of this volume being very simple, I feel that few, if any, words of explanation are required.

It may, however, be well to outline the uniform system of classification of decisions followed in each of the chapters. Each state is allotted one chapter, the laws being given first, the decisions afterward; the latter are divided into a series of groups, each represented by a letter of the alphabet, and arranged in, what I believe to be, a logical sequence.

The subjects of the decisions found under each of the letters, are as follows:

### A.

Bailment; General principles; Kinds of; Difference between a bailment and a sale; Statute of limitations.

### B.

Warehousemen, their duties, rights and liabilities in general; Public and private warehousemen; Ordinary care; When liability begins, when it terminates; Disputed ownership; Bailor's title; Conversion, what constitutes; Burden of proof; Liability of directors and stockholders; Partnership agreements; Acts of State Boards and Warehouse Commissions; Commissions; Procedure; Evidence; Pleading.

### C.

Safe deposit boxes.

### D.

Expressmen, transactions with warehousemen.

### E.

Factors, transactions with warehousemen.

**F.**

Carriers, transactions with warehousemen and their liability as warehousemen.

**G.**

Government bonded warehouses.

**H.**

Storage charges; Lien; Sale; Contracts of storage construed.

**I.**

Segregation and commingling of stored property; Substitution of other property.

**K.**

Legal process against stored property.

**L.**

Replevin; Trover; Detinue.

**M.**

Property pledged with warehouseman.

**N.**

Loss or damage to stored property by fire, water, negligence, misdelivery, accident, theft, war, act of God; Procedure; Evidence; Pleading.

**O.**

Measure of damages for loss, or damage to goods.

**P.**

Insurance ; Insurable interest; Warranty of "fire-proof," "frost-proof," etc.; Contracts to keep insured.

**Q.**

Warehouse receipts; Definition; Requisites; Interpretation; When title passes; Estoppel by; Receipts of private warehouse-

men; Exemptions in; Guaranty; Negotiability; What constitutes a *bona fide* holder; As collateral; Delivery of property without surrender of receipt; Special and irregular receipts; Bogus and forged receipts; Procedure; Evidence; Pleading.

**R.**

Bills of lading; Definition; Liability upon; Exemptions in; Negotiability; As collateral; *Bona fide* holder; Bogus bills of lading; Procedure; Evidence; Pleading.

**S.**

Customs among warehousemen as affecting their rights and liabilities.

**T.**

Liability of warehousemen for injuries to employees; Doctrine of fellow servants; Fraud and crimes of warehousemen.

**U.**

Constitutionality of statutes pertaining to warehousemen; Statutes authorizing the taking of land, prescribing maximum rates for storage, etc.

If this volume assists in the dissemination of legal knowledge concerning the important subject of warehousemen, their rights and liabilities, I shall feel amply repaid.

My sincere thanks are due Mr. Albert M. Read, Vice President of the American Warehousemen's Association, and Chairman of its Committee on Laws and Legislation, for his untiring efforts which have made possible the publication of this volume.

BARRY MOHUN.

WASHINGTON, D. C.

September 12, 1903.



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## CHAPTER I.

### ALABAMA.

#### LAWS PERTAINING TO WAREHOUSEMEN.

##### **Warehousemen or common carriers give receipt or bill of lading—Contents :**

Warehousemen or common carriers, receiving things or property of any kind for safe-keeping, or for carriage, for hire or reward, must, on the delivery to them of such things or property, give the person from whom received a receipt or bill of lading, stating the order or condition in which such things or property may be, and if cotton in bales is received, stating expressly the condition of the bagging, ropes, or ties, and of the cotton, whether dry, damp, wet or very wet; and such warehouseman or common carrier is bound to deliver in like order and condition as when received ; and if such receipt or bill of lading be not given, such things or property must be deemed and taken to have been in good order or condition at the time of delivery to such warehouseman or carrier, and he is bound to deliver in like good order and condition; and the warehouseman or carrier, neglecting or failing to give such receipt or bill of lading, is liable for all loss or damages the owner of such things or property may sustain in consequence of such neglect or failure; but nothing in this section contained must be construed as affecting the common-law liability of a warehouseman or of a common carrier for an injury to or for the loss of such things or property. Code, Ala. 1896, sec. 4218.

##### **Receipt or bill of lading ; when not to be given :**

A warehouseman, common carrier, or wharfinger, or other person engaged in the business of storage, carriage, or of keeping for shipment, or of forwarding things or property, must not give a receipt or bill of lading for the things or property for storage, for carriage, or for keeping for shipment, or for for-

warding, unless such things or property have been actually delivered to him, or placed under his control; and a second receipt or bill of lading must not be issued or given, the original being outstanding, without writing across the face thereof the word "duplicate." *Id.* sec. 4219.

#### **Delivery to cotton-compress:**

A delivery of cotton at or to a compress for the purpose of being compressed, at the instance, or in the usual course of business of a warehouseman, common carrier, wharfinger, or other person engaged in the business of storage, or of carriage, or of keeping for shipment, or of forwarding, may be taken and deemed as an actual delivery to such warehousemen, carrier, wharfinger, or other person, and therefor a receipt or bill of lading may be issued or given. *Id.* sec. 4220.

#### **Sale, etc., by warehouseman, carrier, or wharfinger:**

A warehouseman, common carrier, wharfinger, or other person engaged in the business of storage, carriage, or of keeping for shipment, or of forwarding things or property, must not, otherwise than is authorized by law, or by the contract of delivery to them, make sale of things or property intrusted to them; nor, without the assent in writing of the person to whom they may have given a receipt or bill of lading, or of the legal holder of such receipt or bill of lading, encumber or transfer the same; nor must they otherwise than as may be authorized by the contract of delivery to them, part with the control or possession of such things or property, without the assent in writing of the person to whom they may have given a receipt, or bill of lading, or of the legal holder of such receipt or bill of lading. *Id.* sec. 4221.

#### **Above section construed:**

Transferee must be the legal holder of the receipt and in the manner above prescribed. *Baker v. Malone & Sons*, 126 Ala. 510; *Lehman v. Pritchett*, 84 Ala. 512; *Ala. State Bank v. Barnes*, 82 Ala. 607.

#### **Warehouse receipt negotiable:**

The receipt of a warehouseman, on which the words "not

"nogotiable" are not plainly written or stamped, may be transferred by the indorsement thereof, and any person to whom the same is transferred, must be deemed and taken to be the owner of the things or property therein specified, so far as to give validity to any pledge, lien or transfer made or created by such person; but this section must not be so construed as to affect or impair the lien of a landlord on such things or property for rent or advances, or to affect or impair any lien thereon created by contract, of which notice is given by registration in the mode prescribed by law; and unless the words "not negotiable" be plainly written or stamped on the receipt, the warehouseman must not deliver the things or property therein specified except on the delivery and cancellation of the receipt; or in case of partial delivery, without an indorsement thereon of such partial delivery; in the event of the loss or destruction of such receipt, the warehouseman, not having notice of the transfer thereof by indorsement, may make delivery of the things or property to the rightful owner thereof; if the things or property, or any part thereof, be claimed or taken from the custody or possession of the warehouseman under legal process, the surrender thereof may be made without the delivery or cancellation of such receipt, or without indorsement thereon. *Id.* sec. 4222.

**False or second receipts, or delivery without cancellation, or indorsement of partial delivery :**

If any common carrier, not having received things or property for carriage, shall give or issue a bill of lading, or receipt, as if such things or property had been received, or any warehouseman, or wharfinger, or person engaged in the business of storage, or keeping for shipment, or forwarding, shall issue a receipt for things or property, not having received them; or if any such parties shall give or issue a second bill of lading, or receipt, the original being outstanding, not expressing in such second bill of lading or receipt that it is a duplicate, or shall surrender such things or property without receiving and cancelling the bill of lading or receipt issued therefor, or make partial delivery without indorsing such partial delivery on such bill of lading or receipt, except as provided in the preceding

section, such carrier, warehouseman, wharfinger, or person is liable to any person injured thereby for all damages, immediate or consequential, therefrom resulting. *Id.* sec. 4223.

**How common carrier absolved from liability as insurer on arrival of freight and deposit in warehouse, conditions, etc.:**

A common carrier, if the place of destination of freight is a city or town having two thousand inhabitants, or more, and a daily mail, is not relieved from liability as a common carrier by reason of a deposit or storage of freight in a depot or warehouse, unless within twenty-four hours after the arrival of such freight, notice thereof is given the consignee, personally or through the mail; and if notice is given through the mail, the postage must, by the consignee, be refunded to the carrier. *Id.* sec. 4224.

**Sale of perishable freight to pay charges :**

When any fruit, vegetables, fresh meat, oysters, eggs, or fish, or other property of so perishable a nature as to be in danger of great depreciation, has been transported by a common carrier to the place of destination, and remains unclaimed for one day after its arrival, or if the consignee resides, or is present at the place of destination, for one day after personal notice in writing to him, or his agent, of the arrival of the freight, and the amount of charges due thereon, the same may be sold by the carrier or his agent at public outcry to the highest bidder for cash, at some public place at the point of destination, on one day's notice, indicating the nature of the package, the consignee and the time and place of sale, by publication in some newspaper published at the place of destination, or, if none is published thereat, then by posting the notice at the office or place of business of the carrier. *Id.* sec. 4225.

**Sale of other freight to pay charges :**

When any other freight than that mentioned in the preceding section remains unclaimed for sixty days after its arrival at the place of destination, the same may be sold by the carrier or his agent at public outcry to the highest bidder for cash, at some public place within the state of Alabama, after notice

indicating the nature of the package, the consignee and the time and place of sale, has been given for three weeks by publication once a week, in some newspaper published at the place of sale, or if no such paper is there published, by posting the notice at three public places therein; but before any sale can be made under this section, the carrier must, before giving notice of the sale, demand payment of the charges due thereon from the owner or consignee, if either of them resides at the place of destination; but if neither of them resides at such place, failure to make such demand shall not prevent the sale; but notice of such sale shall be given the consignor, when known, by mail. *Id.* sec. 4226, as amended by act of February 15, 1901.

#### **Insurance ; sale ; proceeds :**

The common carrier may insure the freight, at the expense of the owner, from the date of its arrival to the sale above authorized; and the proceeds of any sale made under the last two sections shall be applied to the payment of freight, insurance, and all charges incident to storage and sale, and the residue, if any, shall be paid over to the owner or consignee. Code, Ala. 1896, sec. 4227.

#### **The three preceding sections applicable to warehousemen :**

The provisions of the three preceding sections apply to warehousemen to whom freight is delivered by a common carrier. *Id.* sec. 4228.

#### **Concealing cotton or changing marks :**

Any person, who conceals cotton delivered to himself or another for sale or storage, or changes or mutilates the marks or brands thereof for the purpose of hindering the owner or person having a lien thereon from recovering it, and any warehouseman who permits such conduct, shall be liable to the owner or lienor for all damages, immediate or remote, by him sustained; and any warehouseman with whom such cotton has been stored, who has information which would lead to the discovery thereof, and refuses, on application, to impart the same to the owner or lienor, is liable to him for the value of the cotton. *Id.* sec. 4229.

**Contracts in writing assignable by indorsement :**

All bonds, contracts and writings for the payment of money or other thing, or the performance of any act or duty, are assignable by indorsement so as to authorize an action thereon by each successive indorsee. *Id.* sec. 876.

**Above section construed ; held to apply to warehouse receipts :**

*Lehman v. Marshall*, 47 Ala. 362; *Allen, Bethune & Co. v. Maury & Co.*, 66 Ala. 10; *Ala. State Bank v. Barnes*, 82 Ala. 607; *Jemison et al. v. Birmingham & A. R. R. Co.*, 125 Ala. 378.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment and sale—What constitutes a sale—Delivery of warehouse receipts—Right to reject all inferior goods.*

Where there was a delivery of the warehouse receipts for cotton, to the intending purchaser, and the price for the same paid to the vendor, out of such price there being deducted five dollars per bale on account of the reserved right of the purchaser to reweigh and inspect the cotton and to reject sand-packed or other of an inferior quality, it was held, that there was a sale of the cotton to the purchaser; that the title had vested in him subject to be divested of so much of the cotton as was of inferior quality. *Allen, Bethune & Co. v. Maury & Co.*, 66 Ala. 10.

## B.

*Ordinary care.*

Warehousemen are bailees for hire and it is their duty to bring, to the business in which they are employed, reasonable skill and diligence. They are answerable only for ordinary negligence. *Seals v. Edmonson*, 71 Ala. 509; *Hatchett v. Gibson*, 13 Ala. 587; *Ala. & Tenn. R. R. Co. v. Kidd*, 35 Ala. 209; *Kennedy Bros. v. Mobile & G. R. R. Co.*, 74 Ala. 430; *Moore v. The Mayor, etc.*, 1 Stern, 284; *Mobile & G. R. R. Co. v. Prewitt*, 46 Ala. 63; *Jones v. Hatchett*, 14 Ala. 743; *Davis & Son v. Hurt*, 114 Ala. 146.

*Same—Want of ordinary care—Effect.*

A want of ordinary care in one particular, on the part of a warehouseman, does not render him responsible for a loss occasioned by other causes not connected with that particular. *Gibson v. Hatchet*, 24 Ala. 201.

*Same—Care which warehouseman bestows upon his own property no criterion—Evidence.*

The care which a warehouseman may bestow upon his own property, or the lack of such care, is a matter about which he must exercise his own discretion so long as he works no injury

to others, or their property. The measure of his duty is to bestow reasonable skill and ordinary diligence in regard to the property intrusted to his custody—doing all that men of ordinary prudence would do under like circumstances, without regard to the care he may exert for himself. In an action against a warehouseman for the loss of cotton, it was shown that the cotton was destroyed on the night of the twenty-fifth of December, that the warehouse was without a roof and that the authorities had refused to prohibit the explosion of firecrackers and like fireworks in the streets of the city. In this connection, evidence was offered to show that the defendant owned a large quantity of cotton stored in his warehouse and that on the twenty-fourth day of December he obtained additional insurance for three days only, it was held, that the rejection of the evidence in regard to this insurance on the defendant's own goods was proper. *Seals v. Edmonson*, 71 Ala. 509.

*Same—Breach of contract by warehouseman—Change in liability.*

Where a ginner received cotton and agreed to pick and bale it in preference to all other cotton, but fails to do so in that he gins other cotton, leaving part of plaintiff's cotton unginning, and the gin with plaintiff's cotton is destroyed by fire, the ginner is liable to the plaintiff for the loss. *Pattison v. Wallace*, 1 Stew. 48. Questioned in *Lehman, Durr & Co. v. Pritchett*, 84 Ala. 512.

*Same—Authority of consignee or warehouseman to receive goods.*

A consignee of goods shipped by steamboat is the agent of the owner to receive them at the port of delivery, and has authority to receive the goods at any particular point at that port; and where the bill of lading stipulates for a delivery "unto warehouse or to assigns" at a river landing in the interior, the warehouseman at that landing is the consignee. The consignee, who is, for most purposes, deemed the owner, may waive a full compliance with all the terms of the carrier's contract in reference to delivery. *Winston v. Cox B. & Co.*, 38 Ala. 268.

*Delivery—Any member of a partnership entitled to goods stored in firm name.*

Where property is stored by one member of a firm with a warehouseman, in the name of the firm, each partner may receipt for such property; a delivery to any one partner is a delivery to the firm. *Croswell v. Lehman, Durr & Co.*, 54 Ala. 363.

*Same—Presumption from failure to deliver without explanation—Burden of proof.*

If a warehouseman fails to deliver goods, intrusted to him, upon demand, and will not account for them or explain his refusal, it will be presumed that he has wrongfully converted, or wrongfully retains, the same. But if he alleges their loss from a cause for which he would not be responsible, the burden is cast upon the plaintiff to prove that the loss was caused by the warehouseman's negligence. *Seals v. Edmonson*, 71 Ala. 509; *Mobile & G. R. R. Co. v. Prewitt*, 46 Ala. 63.

*Same—What will not constitute element of damages in case of delay.*

An action was brought against a warehouseman to recover damages owing to the failure of the warehouseman to deliver property on the day when ordered. It appeared that the delivery was delayed one day; the plaintiff claimed that as a result thereof he was entitled to the cost of the insurance for such day, and for the interest which he was obliged to pay on the money with which he was to pay for the goods. It was held, that there being no proof that the insurance expired on the day on which the goods were ordered from the warehouse, and that although it was a matter of common knowledge that cotton brokers borrowed money at very high rates of interest, nevertheless, such costs were not the necessary and natural result of the delay, and that, therefore, plaintiff could not recover for the same. *Swift & Co. v. Eastern Warehouse Co.*, 86 Ala. 294.

*Bailee in general cannot dispute bailor's title—Notice of adverse claims—if he delivers to one purporting to be true owner he assumes burden of proving same.*

In general, a bailee cannot deny the title of his bailor and

it is his duty to return the property to his bailor upon demand. If through negligence or design he delivers the property to one not entitled to it, his action is a conversion thereof. But where he has notice that the property does not belong to his bailor, then a delivery to him would be a conversion. If the bailee, believing his bailor not to be the true owner, surrenders the property to one whom he believes to be such owner, he thereby assumes the burden of proving such ownership. *Powell v. Robinson & Ledyard*, 76 Ala. 423.

*Same—Duty of bailee where adverse claims—Judgment against bailee conclusive as to title.*

At common law a bailee cannot compel adverse claimants to interplead and he must defend himself as best he may. If the bailee be unwilling to take upon himself the *onus* of proving a superior title, he may await the bringing of an action by the adverse claimant. On such action being brought, he should give his bailor notice and require him to defend. A judgment against the bailee, whether the bailor appears, or refuses to defend after notice, will be a sufficient defense in any subsequent action by the bailor. In such a case, the rule that the bailee cannot dispute the title of his bailor does not apply. The judgment there would be conclusive of the superiority of the title of the adverse claimant. *Powell v. Robinson & Ledyard*, 76 Ala. 423; *Croswell v. Lehman, Durr & Co.*, 54 Ala. 363; *Calhoun v. Thompson*, 56 Ala. 166; *Thompson & Co. v. Union Warehouse Co.*, 110 Ala. 499.

*Same—Warehouseman must deliver to bailor or his assignee—May be compelled to deliver to true owner.*

It is a general rule that one who has received property from another as his bailee must restore, or account for the property, to him from whom he received it. But the bailee has no better title than the bailor, and consequently it follows that if a person entitled, as against the bailor, to the property, claims it, the bailee has no defense against him. A bailee, therefore, is protected where he has made a delivery to one authorized to receive the goods. *Croswell v. Lehman, Durr & Co.*, 54 Ala. 363.

*Conversion—Delivery of mortgaged goods to holder of receipt—Recordation of mortgage constitutes notice.*

The defendants, warehousemen, had stored certain grain in their warehouse and it appeared that at the time of receiving the grain it was mortgaged to the plaintiff, and that the mortgage thereof had been duly recorded, as required by the statutes of this state. Subsequently, the defendant delivered the grain to a third party who had become the holder of the warehouse receipt therefor. It was held, that the fact that the mortgage was recorded was constructive notice to the defendants of the interest of the plaintiff, and was as binding on them as actual notice would have been, and the delivery to the holder of the receipt was a conversion of the grain for which the defendant was liable. *Hudmun & Bros. v. Du Bose*, 85 Ala. 446.

*Action of assumpsit by warehousemen, when maintainable.*

Warehousemen may maintain *assumpsit* for cotton “shipped by them as warehousemen only” and not delivered to the consignees, *provided*, the contract was made with them personally. *Fry v. Carter & Howell*, 25 Ala. 479.

*Evidence—Opinion.*

Where cotton was destroyed by fire, the following opinion was held to be properly receivable in evidence, it being first shown that the witness had been engaged in the cotton business for many years. That if a blazing missile or burning coal had been applied to the cotton, it would have been immediately fired and would have burned with such rapidity that its extinguishment would have been improbable, if not impossible. *Seals v. Edmonson*, 71 Ala. 509.

*Pleading—Counts in complaint—Charge—Liability where there is gross negligence.*

Where in an action against a railroad company for the loss of goods intrusted with it for transportation, the complaint contained two counts, one on the contract of common carriers, the other on a contract of warehouseman without hire, it appeared that the goods had been lost, while stored in the company's warehouse and after the plaintiff had had an opportunity

to remove them, a charge asked by the defendant under the latter count, that the company is only responsible for injuries and losses occasioned by its gross negligence is proper and should be given. *Mobile & G. R. R. Co. v. Prewitt*, 46 Ala. 63.

## H.

*Storage charges—Performance within one year—Promise by a third person to pay same—Statute of frauds.*

A warehouseman sued a vendor for storage charges due on cotton which the former had shipped after receiving the promise of the defendant that he would pay the same. It was held, that the contract was not within that provision of the statute of frauds which requires all contracts which by the terms are not to be performed within one year, to be in writing. That the contract in question could be performed in less than one year, although it might continue for a much longer period. To facilitate the owner of the cotton in his dealings with the plaintiff, the defendant made the promise and the plaintiff surrendered his lien on the cotton in consideration of the promise of the defendant to secure him in payment of his charges. The contract by which this object was accomplished was supported by considerations moving directly between the parties and, although it might be said to be in form of an undertaking to answer for the debt of another, and as a matter of fact, when performed, it may have that effect, it was not a contract coming within the third clause of the statute of frauds and need not have been in writing. *Prout & Robinson v. Webb*, 87 Ala. 593.

*Same—Valid claim for, up to date of accidental destruction of goods.*

The plaintiff, a warehouseman, brought an action against the defendant who had become the owner of cotton stored with him for storage charges due thereon. It was shown to be the custom and practice of warehousemen in the locality where this warehouse was situated not to demand payment of storage charges until the cotton was ordered out of the warehouse and, therefore, the last holder of the receipt was liable for the accrued storage charges. The defendant contended, that as the

custom was shown to be that the warehousemen did not demand storage charges until the cotton was ordered out, and that as in this case the cotton, having been burned, was never ordered out of the warehouse, that therefore there was no valid claim for storage charges. The court held this to be an extreme view to take of the practice of warehousemen and one which could not be sustained, that the practice was simply one of convenience and that the warehouseman could not be said to waive thereby his lien upon the goods for storage charges. Judgment given for plaintiff. *Jones v. Chaffin*, 102 Ala. 382.

*Trover—Not maintainable against warehouseman where there is simply a failure to deliver on demand—Conversion—Gist of action.*

Where a warehouseman fails to deliver on demand goods intrusted to him, this fact alone will not entitle the owner to maintain trover against him. There must be a conversion before this action can be brought, and a conversion is not shown simply by a failure to deliver. The owner in such a case may either bring assumpsit for the breach of the contract, or he may sue in case for negligence. The limitations of the action of trover are closely drawn and it is essential in all cases to show a conversion which is the gist of the action. *Davis & Son v. Hurt*, 114 Ala. 146; *Ala. & Tenn. River R. R. Co. v. Kidd*, 35 Ala. 209; *Baker v. Malone & Sons*, 126 Ala. 510.

*Same—Will not lie where goods are taken by armed force.*

An action of trover will not lie where goods are taken by an armed force without any negligence or complicity on the part of the bailee. *Abraham & Bro. v. Nunn*, 42 Ala. 51.

*Same—Complaint must contain averment of ownership.*

Where a complainant, in an action of trover, failed to aver that the persons, from whom the plaintiff was alleged to have purchased the cotton, were the owners thereof, and also failed to aver that the plaintiff was the owner of the cotton, it was held, that such complaint was demurrable on these grounds. *Weil Bros. v. Ponder*, 127 Ala. 296.

*Same—Warehouseman may maintain—Warehouse receipt.*

A warehouseman may maintain, in his own name, an action of trover against one who has converted property intrusted to the warehouseman as bailee. In such case, where the warehouseman is the holder of the warehouse receipt which he issued for the goods, it is not necessary for him to show that the receipt has been indorsed to him in order to pass title to the property. *Baker v. Troy Compress Co.*, 114 Ala. 415.

#### M.

*Pledge—Pledgee cannot be deprived of his rights by fraudulent removal of goods by pledgor.*

Where the pledgee of property was wrongfully deprived of his possession by the pledgor, the pledge was not defeated thereby. Where, therefore, property thus wrongfully removed comes into the hands of a purchaser without notice of the pledge, the pledgee will be protected. *American Pig Iron Storage Warrant Co. v. German, Exec., et al.*, 126 Ala. 194.

#### N.

*Loss by fire.*

A warehouseman is not liable for the value of goods destroyed by fire unless it can be shown that the loss occurred through his negligence. *Seals v. Edmonson*, 71 Ala. 509.

*Same—Failure to sell cotton within a reasonable time—Not proximate cause of loss.*

The defendants, warehousemen and commission merchants, had cotton in their possession belonging to the plaintiffs and received instructions from them to sell the same. The plaintiffs attempted to hold the defendants liable on the ground that, having failed to sell the cotton within a reasonable time after being instructed by the plaintiffs to do so, the cotton being subsequently destroyed by fire, that the loss would not have occurred had defendants obeyed instructions. The court held, that while it might be considered that it was the duty of the defendant to sell the cotton within a reasonable time after being instructed so to do, that its subsequent loss by fire

could not be regarded as the natural and proximate consequences of the delay in selling. That, the burning of the cotton was an accidental or collateral injury, not usually following the result of such delay, that the defendants as commission merchants would be liable for any natural injury resulting from the delay to sell the cotton within a reasonable time, but they would not be liable for a loss suffered through an extraordinary cause having no relation to the delay except that it happened to be contemporaneous. *Lehman, Durr & Co. v. Pritchett*, 84 Ala. 512. (Doctrine of *Patterson v. Wallace*, 1 Stew. 48, not followed.) *Daugherty v. Am. Un. Tel. Co.*, 75 Ala. 168; *East Tenn., Va. & Ga. R. R. Co. v. Lockart*, 79 Ala. 315; *Burton v. Holly*, 29 Ala. 318.

*Warranties—Stipulation in the contract that warehouse was to be fireproof—Effect thereof.*

"If it was a term of the plaintiffs' contract, that their warehouse should be fireproof, and the defendant's cotton was lost by the plaintiffs' failure to provide such a house, then they should make good the damage consequent upon the breach of their undertaking." *Hatchett v. Gibson*, 13 Ala. 599.

#### P.

*Evidence as to necessity of presence of watchman.*

On the trial of a case against a warehouseman for the loss of cotton destroyed by fire while stored with him, evidence was admitted to show that the warehouse had been used for the storage of cotton for many years by the former owner; that during the time of its use, missiles had been shot off in the streets under circumstances similar to those in the present case, and that a watchman had not been employed to guard or protect it. It was held on appeal that this evidence was proper. *Seals v. Edmonson*, 71 Ala. 509.

#### Q.

*Warehouse receipt—Issued in name of warehouseman—Pledge.*

A warehouseman owning goods deposited in his own warehouse had receipts issued therefor and signed by his clerk. The receipts were pledged as collateral security without being

indorsed. It was held that the legal effect of this transaction was to pass to the pledgee of such property, the constructive possession thereof which was sufficient to create a valid pledge, as between the parties, and also as to third persons, not having acquired prior or intervening rights. *Ala. State Bank v. Barnes*, 82 Ala. 607.

*Same—Negotiability—Not negotiable in sense of bills of exchange—Not governed by law merchant.*

A factor having in his possession goods for the purpose of sale, deposited them with the defendant warehouseman and took a receipt therefor in his own name. He thereupon pledged the receipt with a bank to secure payment of a loan. After default was made in payment, an action was brought by the owner of the goods against the warehouseman to recover their possession. The pledgee interposed the claim that as the receipts were negotiable he had taken title to the property under the warehouse laws of the state of Alabama. It further appeared, that in the contract of pledge there was the following sentence, "which cotton has been advanced upon by us for its full value." It was held that the warehouse receipt was not negotiable in the sense of bills of exchange and that it conveyed no greater title to the holder thereof than would the possession of the goods themselves. That the possession of the warehouse receipt by the factor was equivalent only to the possession of the property, and that, therefore, the only interest which the factor could pledge in such cotton was the actual interest which he had therein. Further, that the clause in the warehouse laws which states that warehouse receipts "given for any goods stored or deposited with any warehouseman" means only goods deposited by a person having *title* thereto. This section of the act proceeds upon the assumption that the receipt was so issued. *Commercial Bank of Selma v. Hurt*, 99 Ala. 130; *Allen, Bethune & Co. v. Maury & Co.*, 66 Ala. 10.

*Same—Effect of transfer for a gambling debt—Not a contract.*

The plaintiff brought an action in detinue against a warehouseman for the recovery of cotton represented by a receipt

of which he was a *bona fide* holder. It appeared that the receipt had been issued to one who had transferred it to plaintiff's transferee in consideration of a gambling debt. Such person intervened in the suit and claimed title to the property on the ground that he had not parted with such title as the consideration for which the assignment was made was void under the laws of the state. It was held, that the plaintiff was entitled to possession of the goods and that the transfer of the receipt by the original owner, who had indorsed the same in blank, had been the cause of the plaintiff securing possession of the same in this condition and, therefore, that he was estopped to deny the legality of such transfer. That the effect of the possession of the receipt was the same as the possession of the property which it represented, and that such a warehouse receipt was not a contract within the meaning of the statutes of the state of Alabama by which gambling contracts are declared to be void in the hands of a *bona fide* holder for value. *Danforth v. McElroy & Co.*, 121 Ala. 106; *Allen, Bethune & Co. v. Maury & Co.*, 66 Ala. 10.

*Same—One must be a legal holder to maintain action thereon.*

The legal title to warehouse receipts must be in the plaintiff before he can maintain an action thereon under section 4222 of the code of this state. Where there was no averment in the complaint that the plaintiff had title to the receipt by indorsement, or, that the person to whom it was issued had affirmed in writing that the property should be delivered to the plaintiff, it was held, that the plaintiff could not maintain an action for the recovery of the goods on such warehouse receipts for he was not entitled to possession of them. *Baker v. Malone & Son*, 126 Ala. 510; *Weil Bros. v. Ponder*, 127 Ala. 296.

*Same—Negotiability—Procured through fraud—Innocent purchaser protected.*

Where a third person, innocently and in good faith, purchases the warehouse receipt for goods which his vendor procured by fraud, such third person will be protected, provided he gave value for the property, or incurred some responsibility upon the credit of it, and took without notice of the fraud. *Allen, Bethune & Co. v. Maury & Co.*, 66 Ala. 10.

*Same—As collateral—Delivery without indorsement—Effect.*

The general rule, independent of statutory regulations, is conceded to be that the delivery, without indorsement, of a warehouse receipt payable to bearer, as collateral security, passes the legal title and vests possession of the property in the pledgee. The provisions contained in sec. 876 of the code have been construed to mean that the indorsement of a warehouse receipt is necessary in order to pass the *legal* title thereto. Nevertheless neither the above section nor Sess. Acts, 1880, 1881, p. 133, operates to prevent the transfer of a special property and constructive possession, by the delivery of the receipt without indorsement, sufficient to create a valid pledge as between the parties, and, as to third persons not having acquired prior intervening rights. *Ala. State Bank v. Barnes*, 82 Ala. 607.

*Same—Same—in factor's name—Notice—What title acquired.*

Where a warehouse receipt, issued in the name of a factor for cotton stored by him, recites the name of the owner, and is afterwards transferred by the factor as collateral security for a note, on which note there is indorsed that such "cotton has been advanced upon \* \* \* to its full value" by the factor, the pledgee in receiving the receipt has the equivalent of notice of the true state of the account between the owner and the factor, and becomes the purchaser of only such interest and claim in the cotton as the factor might assert. *Commercial Bank of Selma v. Lee*, 99 Ala. 493; *Commercial Bank of Selma v. Hurt*, 99 Ala. 130.

*Sams—Delivery of cotton to one in possession of the receipt without indorsement—Warehouseman liable.*

A warehouse receipt for cotton, subject to the order of the person in whose name the receipt was given, or the bearer, is an admission that the cotton belongs to such person, and in an action to recover the cotton, or its value, it is no defense that it has been shipped and sold by direction of a party who had obtained possession of the receipt, without indorsement by the person stated to be the depositor in the receipt, and without authority from him to dispose of the same. *Lehman, Durr & Co. v. Marshall*, 47 Ala. 362.

*Same—Pleadings—Suit by transferee against warehouseman—Declaration must allege indorsement to plaintiff—Also defendant's refusal to deliver.*

A declaration, in an action against a warehouseman on a warehouse receipt, failed to allege that the receipt had been indorsed to the plaintiff. On demurrer it was held that such failure was a fatal defect as under section 876 of the Code an indorsement of a warehouse receipt was necessary to pass the title. It was also held that the declaration in this case was further defective in that it did not aver a refusal on the part of the defendant to deliver the cotton stored. *Jemison v. Birmingham & A. R. R. Co.*, 125 Ala. 378; *Allen, Bethune & Co. v. Maury & Co.*, 66 Ala. 10; *Lehman, Durr & Co. v. Marshall*, 47 Ala. 362; *Capehart v. Granite Mills Co.*, 97 Ala. 353; *Baker v. Malone*, 126 Ala. 510. But see *Weil Bros. v. Ponder*, 127 Ala. 296.

*Same—Same—Complaint must aver title in plaintiff's vendor.*

A declaration which failed to aver that the person to whom the warehouse receipts were issued, and from whom plaintiff purchased the cotton, was the owner of the cotton, held defective on demurrer. A majority of the court also held that an indorsement of the warehouse receipt to the plaintiff was not necessary to pass title to him. Tyson, J., dissented from this proposition citing authorities given above. *Weil Bros. v. Ponder*, 127 Ala. 296. See also *Baker v. Troy Compress Co.*, 114 Ala. 415.

## R.

*Bills of lading—Negotiability—Issued in name of fictitious person—Bona fide holder.*

Bills of lading are not negotiable in the sense of bills of exchange and other commercial paper. Although it is true that under some circumstances a bill of exchange, payable to a fictitious person, may be negotiable, this principle does not apply to bills of lading. Therefore one who takes a bill of lading payable to a fictitious firm, and indorsed with such name is not a *bona fide* holder thereof. It was the duty of

such person to inquire as to the name indorsed on the bill of lading, for it was from such firm that his rights as holder would emanate. *Jasper Trust Co. v. K. C., M. & B. R. R. Co.*, 99 Ala. 416.

### S.

#### *Custom, what not good.*

A custom in the city of Montgomery, among merchants, factors and planters, dealing in cotton, that warehouse receipts to deliver to a certain person, or his order, or the bearer, the number of bales of cotton specified in said receipts, are transferable by delivery, as money or bank bills, without indorsement, and that such transfer passes the cotton, without further inquiry or evidence of title than from what arises from the possession of such receipts, unless notice is given that such receipts have been lost or have fallen into the hands of some person who is not the owner or entitled to hold the same, is not a good custom. *Lehman, Durr & Co. v. Marshall*, 47 Ala. 362.

## CHAPTER II.

## ARIZONA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Receipt :**

A warehouse receipt is an instrument in writing signed by a warehouse proprietor or his agent, describing the produce or commodity so as to identify it, stating the name of the owner, the terms of the contract for storage, and agreeing or directing that the produce or commodity be delivered to the order or assigns of a specified person. Rev. St. Ariz. 1901, sec. 4153.

**Owner as manager to give receipt :**

It shall be the duty of every person keeping, managing, controlling or operating, as owner or agent or superintendent of any company or corporation, any warehouse where any produce or commodity is stored to deliver to the owner of such produce or commodity a warehouse receipt therefor, bearing the full name of those operating said warehouses, which receipt shall bear the date of issuance, and shall state from whom received, the number of sacks, if sacked, the number of bushels or pounds, the condition of the same, and the terms and conditions upon which it is stored. *Id.* sec. 4154.

**Form of receipt :**

The receipt required in the preceding section may be in form as follows:

(Name of Firm or Company.)

No. .... (Place and Date.)

Received in store from (name of consignor), (quantity), gross, .... lbs.; tare, .... lbs., No. (give here grade and name of commodity), at owner's risk of unavoidable danger, to be delivered at this warehouse upon return of this receipt properly indorsed and payment of charges. This receipt negotiable when

duly indorsed by consignor. Storage to (here give amount and date).

Signed (name of Firm or Company).  
(Name of Agent) Agent.

*Id.* sec. 4155.

#### **Fraudulent receipts :**

No person shall issue any receipt or other voucher as provided herein for any produce or commodity not actually in store at the time of issuing such receipt, or issue any receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or grade of such property, or duplicate or issue a second receipt for the same while any former receipt is outstanding for the same property, or any part thereof without writing across the face thereof "duplicate." *Id.* sec. 4156.

#### **Property stored to be kept separate :**

No person operating any warehouse where any produce or commodity is stored shall mix any produce or commodity of different grades together, or deliver one grade to another, or in any way tamper with the same while in his possession or custody with a view to securing any profit to himself or any other person, and in no case mix different grades together while in store: *Provided*, That nothing in this title shall be construed to prohibit any person operating any warehouse where any produce or commodity is stored from keeping, piling or storing any produce or commodity offered for storage separate and apart from other produce or commodity, by marking such produce in such manner that it can be identified and delivered on presentation of the warehouse receipt or voucher which was given for the same, in which case the receipt given shall designate the mark on the produce or commodity so stored.

*Id.* sec. 4157.

#### **Property not to be transferred without consent of owner :**

No person operating any warehouse shall sell, incumber, ship, transfer or in any manner remove, or permit to be shipped, transferred or removed, from the place of storage at which the receipt is given, any produce or commodity for which a receipt

has been given by him as aforesaid for storing, without the written consent of the holder of the receipt. *Id.* sec. 4158.

**Owner entitled to property on presentation of receipt and charges :**

On presentation of the receipt given by any person operating any warehouse for any produce or commodity, and on payment of all charges due thereon, the owner shall be entitled to the immediate possession of the commodity named in the receipt, and it shall be the duty of such warehouseman, or other person having possession thereof, to deliver such commodity to the owner of such receipt without further expense to such owner and without unnecessary delay. *Id.* sec. 4159.

**Penalties for violation :**

Any person who shall violate any of the provisions of this title shall be liable to indictment, and, upon conviction, shall be fined in any sum not exceeding five thousand dollars, or be imprisoned in the territorial prison not exceeding five years, or both; and in case of a corporation, the person acting for the corporation shall be liable for like punishment upon indictment and conviction. And every person aggrieved by a violation of this title may have and maintain an action at law against the person or corporation violating any of its provisions to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation, before any court of competent jurisdiction, whether such person shall have been convicted under this title or not. *Id.* sec. 4160.

**Checks and receipts negotiable :**

All checks and receipts given by any person operating any warehouse for any produce or commodity stored or deposited are hereby declared negotiable, and may be transferred by indorsement of the party to whose order such check or receipt was given or issued, and such indorsement shall be deemed a valid transfer of the commodity represented by such receipt, and may be made either in blank or to the order of another. *Id.* sec. 4161.

**Transfer of title :**

All the title to the produce or commodity which the first

holder of a warehouse receipt had when he received it passes to every subsequent indorsee thereof in good faith, and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange. *Id.* sec. 4162.

#### **Receipt made to "bearer":**

When a warehouse receipt is made to "bearer" or in equivalent terms, a simple transfer thereof by delivery conveys the same title as an indorsement. *Id.* sec. 4163.

#### **Receipt does not alter obligations of proprietor:**

A warehouse receipt does not alter the rights or obligations of the warehouse proprietor as defined in this title unless it is plainly inconsistent therewith. *Id.* sec. 4164.

#### **Duplicate receipts:**

A warehouse proprietor must subscribe and deliver to the bailor, on demand, any reasonable number of warehouse receipts, not exceeding three (one original and the others marked "Duplicate," and the original to state the number of duplicates issued) of the same tenor, expressing truly the original contract for storage, and if he refuses to do so, the bailor may take the produce or commodity from him, and recover from him besides all damages thereby occasioned. *Id.* sec. 4165.

#### **Proprietor exonerated from liability:**

A warehouse proprietor is exonerated from liability for produce or commodity by delivery thereof, in good faith, to any holder of an original warehouse receipt thereof, properly indorsed, or made in favor of the bearer. *Id.* sec. 4166.

#### **Surrender of receipt:**

When a warehouse proprietor has given a warehouse receipt, or other instrument, substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the produce or commodity. *Id.* sec. 4167.

(The above laws took effect September 1, 1901.)

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NOTE. There seem to be no decisions in Arizona affecting warehousemen.

## CHAPTER III.

**ARKANSAS.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Warehouseman not to issue receipts until goods are under his control:**

No warehouseman, wharfinger or other person shall issue any receipt or voucher for any goods, wares, merchandise, cotton, grain, flour or other produce or commodity to any person or persons purporting to be the holder or holders, owner or owners thereof, unless such goods, wares, merchandise, cotton, grain, flour or other produce or commodity shall have been actually received into the store or upon the premises of such warehouseman, wharfinger or other person, and shall be in the store or on the premises aforesaid, and under his control at the time of issuing such receipt. S. & H. Digest, 1894, sec. 504.

No warehouseman, wharfinger or other person shall issue any receipt or other voucher upon any goods, wares, merchandise, cotton, grain, flour, or other produce or commodity to any person or persons for any money loaned or other indebtedness, unless such goods, wares, merchandise, cotton, grain, flour or other produce or commodity shall be, at the time of issuing such receipt, in the custody of such warehouseman, wharfinger or other person, and shall be in store or upon the premises and under his control at the time of issuing such receipt or other voucher as aforesaid. *Id.* sec. 505.

No warehouseman, wharfinger or other person shall issue any second or duplicate receipt for any goods, wares, merchandise, cotton, grain, flour or other produce or commodity, while any former receipt for such goods, wares, merchandise, cotton, grain, flour or other produce or commodity, as aforesaid, or any part thereof, shall be outstanding and uncancelled

without writing across the face of the same, "Duplicate." *Id. sec. 506.*

No warehouseman, wharfinger or other person shall sell or incumber, ship or transfer, or in any manner remove, or permit to be shipped, transferred or removed beyond his control, any such goods, wares, merchandise, cotton, grain, flour or other produce or commodity, for which a receipt shall have been given by him, as aforesaid, whether received for storing, shipping grinding, manufacturing or other purpose, without the written assent of the person or persons holding such receipt. *Id. sec. 507.*

No master, owner or agent of any boat or vessel, of any description, forwarder or officer or agent of any railroad, transfer or transportation company, or other person shall sign, or give away any bill of lading, receipt or other voucher or document for any merchandise or property by which it shall appear that such merchandise or property has been shipped on board of any boat, vessel, railroad car or other vehicle, unless the same shall have been actually shipped and put on board, and shall be at the time actually on board or delivered to such boat, vessel, car or other vehicle, or to the owner or owners thereof, or his or their agent or agents, to be carried and conveyed as expressed in such bill of lading, receipt or other voucher or document. *Id. sec. 508.*

All receipts issued or given by any warehouseman, wharfinger or other person or firm, and all bills of lading, transportation receipts and contracts of affreightment issued or given by any person, boat, railroad, transportation or transfer company for goods, wares, merchandise, cotton, grain, flour, or other produce or commodity, shall be and are thereby made negotiable by written indorsement thereon, and delivery in the same manner as bills of exchange and promissory notes; and no printed or written conditions, clauses or provisions inserted in or attached to any such receipts, bills of lading or contracts, shall in any way limit the negotiability, or affect any negotiation thereof, nor in any manner impair the right and duties of the parties thereto, or persons interested therein; and every such condition, clause or provision purporting to limit or affect

the rights, duties or liabilities created or declared in this act, shall be void and of no force or effect. *Id.* sec. 509

**Above section construed—Bill of lading—Transfer without indorsement :**

If a written indorsement is necessary under S. & H. Dig. §§ 509, 510, to transfer the legal title to the property described in a bill of lading, a transfer of one without indorsement as security for advances made is sufficient to pass the equitable title therein. *Turner v. Israel*, 64 Ark. 244.

Warehouse receipts given by any warehouseman, wharfinger or other person or firm for any goods, wares, merchandise, cotton, grain, flour or other produce or commodity, stored or deposited, and all bills of lading and transportation receipts of every kind given by any carrier, boat, vessel, railroad, transportation or transfer company, may be transferred by indorsement in writing thereon, and the delivery thereof so indorsed, and any and all persons to whom the same may be transferred shall be deemed and held to be the owner of such goods, wares, merchandise, cotton, grain, flour or other produce or commodity, so far as to give validity to any pledge, lien or transfer given, made or created thereby, as on the faith thereof, and no property so stored or deposited, as specified in such bills of lading or receipts, shall be delivered except on surrender and cancellation of such receipts and bills of lading; *provided*, that all such receipts and bills of lading which shall have the words, "Not Negotiable," plainly written or stamped on the face thereof, shall be exempt from the provisions of this act. *Id.* sec. 510.

Any warehouseman, wharfinger, forwarder or other person who shall violate any of the provisions of this act shall be deemed guilty of a criminal offense, and upon indictment and conviction shall be fined in any sum not exceeding five thousand dollars, or imprisoned in the penitentiary of this state not exceeding five years, or both; and all and every person or persons aggrieved by the violation of any of the provisions of this act may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this act, to recover all damages which

he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person or persons shall have been convicted of fraud as aforesaid under this act or not. *Id.* sec. 511.

All provisions of this act shall apply to bills of lading, and to all persons or corporations, their agents or servants, that shall or may issue bills of lading of any kind or description, the same as if the words "forwarder" and "bills of lading" were mentioned in every section of said act. *Id.* sec. 512.

So much of the preceding sections of this act as forbids the delivery of property except on surrender and cancellation of the original receipt or bill of lading, or the indorsement of such delivery thereon in case of partial delivery, shall not apply to property replevied, or removed by operation of law. *Id.* sec. 513. Act, March 15, 1887.

When any goods, merchandise or other property shall have been received by any warehouseman, commission merchant, or common carrier and shall not be claimed or received by the owner, consignee or other authorized person for the period of six months from the time the same should have been called for, it shall be lawful for such warehouseman, commission merchant or carrier to sell such goods, merchandise or other property to the highest bidder for cash, first having given twenty days' notice of the time and place of sale to the owner, consignee or consignor, when known, and by advertisement for two insertions in a daily or weekly newspaper published in the county where such sale is to take place, the proceeds of such sale to be applied to the payment of freight, storage and charges due, and the cost of advertising and making said sale, and if any surplus is left after paying freight, storage, cost of advertising and all other just and reasonable charges, the same shall be paid over to the rightful owner of said property at any time thereafter, upon demand being made therefor.

Railroad companies shall not charge storage for the first forty-eight hours, nor more than five cents per day after the first forty-eight hours on baggage not exceeding one hundred and fifty pounds. A record of such sale shall be kept, which

shall be open to the inspection of all parties interested therein.

Sec. 2. All laws in conflict herewith are hereby repealed, and this act shall take effect and be in force from and after its passage. Act XXX, Laws, 1895, Approved March 7, 1895.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Burden of proof—Erroneous instruction to jury.*

The following instruction given to the jury held, on appeal, to be reversible error : “The loss of the cotton being admitted, the burden is upon the defendant to show that such loss was not caused by the negligence of him or his servants; and, unless you find by a preponderance of the evidence that the loss was not caused by such negligence, your verdict will be for the plaintiff.”

Further held that the burden was upon plaintiff to show defendant's negligence. *James v. Orrell*, 68 Ark. 284.

## B.

*Ordinary care—Warehouseman not an insurer.*

A warehouseman is bound only to the exercise of reasonable and ordinary care in the preservation of goods intrusted to him. He is not an insurer of such goods and he is not responsible for their loss unless occasioned by his fault or negligence. *Little Rock & F. S. Ry. Co. v. Hunter*, 42 Ark. 200; *Kansas City & F. S. Ry. Co. v. McGahey*, 63 Ark. 344; *Murphy v. Lemay*, 32 Ark. 223; *Union Compress Co. v. Nunnally*, 67 Ark. 284; *Burr & Co. v. Daugherty*, 21 Ark. 559.

*Conversion—Sale by son of warehouseman—Ratification.*

The son of a warehouseman sold plaintiff's goods which were stored. It appeared that the son thought the goods had been abandoned ; further that the warehouseman accepted part of the proceeds of the sale and intended to collect the balance. Held, that this was a ratification of the son's acts and that it constituted a conversion of the goods for which the warehouseman was liable. *Creson v. Ward*, 66 Ark. 209.

## C.

*Lien—None for other indebtedness—Waiver of—Vendee.*

A warehouseman has no lien upon goods in his possession for any indebtedness to him from the owner disconnected with

the charges upon the goods. A warehouseman having placed his refusal to deliver goods on the ground of a claim against the owner disconnected with the goods, cannot afterwards set up his lien for storage as an excuse for not having delivered them. Nor is it necessary, after refusal to deliver on such ground for the owner to make formal tender of the amount due for storage. *Scott v. Jester*, 13 Ark. 437.

#### L.

*Replevin—Storage charges must be paid before it will lie—Demand.*

Replevin will not lie for property legally in the possession of another who has a lien upon it for charges, until such charges be paid, nor until after demand and refusal or conversion. *Hill v. Robinson*, 16 Ark. 90; *Burr & Co. v. Daugherty*, 21 Ark. 559.

#### N.

*Loss of goods—Destruction after reaching hands of warehouseman, but before reaching place of storage.*

Where a warehouseman agrees to receive goods at another than the place of storage, he is bound to exercise ordinary diligence in their removal and preservation from waste; and if from the want of common and reasonable diligence in their removal they are destroyed, he would be responsible to the bailor in the proper form of action. *Burr & Co. v. Daugherty*, 21 Ark. 559.

*Negligence—What constitutes—Destruction by fire.*

In an action against a railway company liable as warehouseman, for goods destroyed in its depot, it appeared that a large quantity of cotton was piled on its platform near the depot and a short distance from the railway track; that at the time the weather was very dry; that the cotton was highly inflammable and without protection; that about fifteen minutes after a train passed, the cotton caught fire, which extended to the depot and destroyed plaintiff's goods. Held, that there was evidence to sustain a finding that defendant was guilty of negligence. *Railway v. Dodd*, 59 Ark. 317.

*Destruction by a mob.*

Where goods in the hands of one liable as a warehouseman were destroyed by a mob, and no evidence was given to show negligence on his part, it was held that he was not liable for the value of the same. *Pacific Express Co. v. Wallace*, 60 Ark. 100.

**P.***Insurance—Compress company may insure for full value.*

Where a compress company insured goods intrusted with it for compression, to their full value and in its own name it was held lawful, and that in the case of loss it could recover the full amount of the policy. After deducting the amount of its interest it would hold the balance of the fund in trust for the owners of the goods. *California Ins. Co. v. Union Compress Co.*, 133 U. S. 387; *Home Ins. Co. v. Balto. Warehouse Co.*, 93 U. S. 527; *London & N. W. Ry. Co. v. Glyn*, 1 Ell. & E. Q. B. 652.

*Warehouse receipt—Effect of transfer.*

A warehouseman's receipt for cotton stored in his warehouse is such a document of title that its transfer, by indorsement or otherwise, clothes the transferee with the legal title and constructive possession of the cotton; and this without notice to the warehouseman of the transfer or agreement by him to hold for the transferee. *Durr et al. v. Hervey*, 44 Ark. 301.

*Same—Same—Warehouseman bailee of every transferee.*

By executing the receipt the warehouseman consents to become the bailee of any one to whom it may be transferred, and to become such bailee from the time of transfer. *Id.*

*Same—As collateral—Indorsement, effect of.*

The indorsement and delivery of a warehouse receipt by the owner of the property described in the receipt, to secure a debt, passes the title of the property to the indorsee, as against the claims of purchasers and creditors. *Bank of Newport v. Hirsch*, 59 Ark. 225.

*Bill of lading—Recitals therein as to condition of the goods.*

A recital in a bill of lading that the goods were received "in apparent good order" refers only to the external condition of the goods, and as between the original parties is only *prima facie* proof of the true condition of the goods when received. *Ry. Co. v. Neel*, 56 Ark. 279.

*Same—Transfer without indorsement—Equitable title.*

By the statutes of this state bills of lading are made negotiable like those of exchange and promissory notes and may be transferred by written indorsement. (Sand. H. Dig. secs. 509 and 510.) Assuming that these statutes require written indorsement to transfer the legal title it is, nevertheless, true that the transfer without indorsement, like the transfer of an unindorsed note, would be sufficient to pass the equitable title. *Turner v. Israel*, 64 Ark. 244.

*Same—What constitutes possession or control—Estoppel.*

By the Act of March 15, 1887 (sec. 505), common carriers, warehousemen and others are prohibited from issuing a receipt, bill of lading or other voucher for any goods unless the same are in store or upon the premises and under the control of such warehouseman or carrier at the time of the issuance thereof. This statute gives a right of action against any person aggrieved by the issuance of such receipt or voucher contrary to its terms. It appeared that a carrier issued bills of lading for goods which were in possession of a compress company pursuant to an arrangement therewith. It was held that the carrier was not estopped as to third persons from denying that the property represented by the bill of lading was not in his possession or under his control. *Martin v. Railway Co.*, 55 Ark. 510.

## CHAPTER IV.

### CALIFORNIA.

#### LAWS PERTAINING TO WAREHOUSEMEN.

##### **Deposit, kinds of :**

A deposit may be voluntary or involuntary; and for safe-keeping or for exchange. Pomeroy's Civil Code, Cal. 1901, sec. 1813.

##### **Deposit for safe-keeping, what :**

A deposit for keeping is one in which the depositary is bound to return the identical thing deposited. *Id.* sec. 1817.

##### **Deposit for exchange, what :**

A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited. *Id.* sec. 1818.

##### **Depositary must deliver on demand :**

A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section eighteen hundred and twenty-five. *Id.* sec. 1822.

##### **No obligation to deliver without demand :**

A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time. *Id.* sec. 1823.

##### **Notice to owner of adverse claim :**

A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken ad-

versely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him. *Id.* sec. 1825.

#### **Notice to owner of thing wrongfully detained :**

A depositary who believes that a thing deposited with him is wrongfully detained from its true owner may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice. *Id.* sec. 1826.

#### **Delivery of a thing owned jointly, etc. :**

If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing. *Id.* sec. 1827.

#### **Depositor must indemnify depositary :**

A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and, 2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking. *Id.* sec. 1833.

#### **Obligations as to use of thing deposited :**

A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity. *Id.* sec. 1835.

#### **Liability for damage arising from wrongful use :**

A depositary is liable for any damage happening to the thing deposited, during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used. *Id.* sec. 1836.

**Sale of thing in danger of perishing :**

If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor. *Id.* sec. 1837.

**Injury to or loss of thing deposited :**

If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully, or by gross negligence, permitted the loss or injury to occur. *Id.* sec. 1838.

**Limitation of depositary for negligence :**

The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth. *Id.* sec. 1840.

**Deposit for hire :**

A deposit not gratuitous is called storage. A depositary in such case is called a depositary for hire. *Id.* sec. 1851.

**Degree of care required of depositary for hire :**

A depositary for hire must use at least ordinary care for the preservation of the thing deposited. *Id.* sec. 1852.

**Rate of compensation for a fraction of a week, etc. :**

In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month. *Id.* sec. 1853.

**Termination of deposit :**

In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice. *Id.* sec. 1854.

**Same :**

Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing. *Id. sec. 1855.*

**Lien for storage charged :**

A depositary for hire has a lien for storage charges, which is regulated by the title on liens. *Id. sec. 1856.*

**Storage property to be sold :**

If, from any other cause other than want of ordinary care and diligence on his part, a depositary for hire is unable to deliver perishable property, baggage, or luggage received by him for storage, or to collect his charges for storage due thereon, he may cause such property to be sold, in open market, to satisfy his lien for storage; *provided*, that no property except perishable property shall be sold, under the provisions of this section, upon which storage charges shall not be due and unpaid for one year at the time of such sale. *Id. sec. 1857.*

**Warehouse receipts must not be issued unless the property has been received and remains in store :**

A warehouseman, wharfinger, or other person doing a storage business must not issue any receipt or voucher for any merchandise, grain, or other product or thing of value, to any person purporting to be the owner thereof, nor to any person as security for any indebtedness or for the performance of any obligation, unless such merchandise, grain, or other product, commodity, or thing has been, in good faith, received by such warehouseman, wharfinger or other person, and is in his store or under his control at the time of issuing his receipt; nor must any second receipt for any such property be issued while a former receipt for any part thereof is outstanding and uncancelled. *Id. sec. 1858.*

**Property not to be removed without consent in writing :**

No warehouseman, wharfinger, or other person must sell or incumber, ship, transfer, or remove beyond his control any

property for which a receipt has been given, without the consent in writing of the person holding such receipt plainly indorsed thereon in ink. *Id.* sec. 1858a.

#### **Warehouse receipts, classification and effect of :**

Warehouse receipts for property stored are of two classes; first, transferable or negotiable; and second, non-transferable or non-negotiable.

Under the first of these classes the property is transferable by indorsement of the party to whose order such receipt was issued, and such indorsement is a valid transfer of the property represented by the receipt, and may be in blank or to the order of another. All warehouse receipts must distinctly state on their face for what they are issued and its brands and distinguishing marks and the rate of storage per month or season, and, in case of grain, the kind, the number of sacks, and pounds. If a receipt is not negotiable, it must have printed across its face, in red ink, in bold, distinct letters, the word "non-negotiable." *Id.* sec. 1858b.

#### **Indorsement on back of negotiable receipt of property delivered :**

If a negotiable receipt is issued for any property, neither the person issuing it nor any other person into whose care or control the property comes must deliver any part thereof without indorsing on the back of the receipt, in ink, the amount and date of the delivery; nor can he be allowed to make any offset, claim, or demand other than is expressed on the face of the receipt, when called upon to deliver any property for which it was issued. *Id.* sec. 1858c.

#### **Negotiable receipts and their effect :**

If a non-negotiable receipt is issued for any property, neither the person issuing nor any other person in whose care or control the property comes must deliver any part thereof, except upon the written order of the person to whom the receipt was issued. *Id.* sec. 1858d.

#### **Liability of loss by fire :**

No warehouseman or other person doing a general storage

business is responsible for any loss or damage to property by fire while in his custody, if he exercises reasonable care and diligence for its protection and preservation. *Id.* sec. 1858e.

#### **Penalties and liabilities :**

Every warehouseman, wharfinger, or other person who violates any of the provisions of section eighteen hundred and fifty-eight to eighteen hundred and fifty-eight *e*, inclusive, is guilty of a felony, and, upon conviction thereof, may be fined in a sum not exceeding five thousand dollars, or imprisoned in the state prison not exceeding five years or both. He is also liable to any person aggrieved by such violation for all damages, immediate, or consequent, which he may have sustained therefrom, which damages may be recovered by a civil action in any court of competent jurisdiction, whether the offender has been convicted or not. *Id.* sec. 1858*f*.

#### **Finder may put thing found in storage :**

The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character, at a reasonable expense. *Id.* sec. 1868.

#### **Obligations of carrier when freight not delivered :**

If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post-office. *Id.* sec. 2120.

#### **Carrier, how exonerated from liability :**

If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him. *Id.* sec. 2121.

NOTE.—The Act of May 1, 1851 (Statutes of 1851, page 170), next hereinafter set forth, has never been directly repealed and whether it is still in force, and how far it may have been indirectly modified by other provisions of the law and the Codes, is doubtful, but it should be considered when making sales, and so far as possible, complied with.

An Act to authorize the keepers of warehouses to sell goods on storage after a certain period.

Passed May 1, 1851.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Sec. 1. It shall and it is hereby made lawful for any merchant or keeper of a warehouse in this state to sell by public auction any and all goods, wares, and merchandise, which may have been left in his store or on storage three months after the storage as agreed upon by the parties shall become due, by giving at least thirty days' notice of such sale, provided he shall only sell sufficient to pay the storage; *provided however*, that if no agreement shall have been made by the parties, twelve months shall be considered the time for goods to remain in store before the advertising of and sale for storage shall take place.

Sec. 2. All goods offered for sale to pay storage as aforesaid shall be published in some newspaper published in such city, town, or place, or if there should not be any newspaper published in any such city, town or place, then there shall be a notice posted in writing at three of the most public places in such city, town or place, setting forth the kind of goods offered for sale, after which sale the party having them in store shall make out an account of the same, which sums shall be deducted from said sale; the residue shall be paid over to the order of the treasurer of the state hospital within the county, and in the county of San Francisco to the city treasurer for hospital purposes, to the credit of the party owning the goods so sold.

Sec. 3. All sums thus paid over to the treasurer of the state hospital shall go into the general fund of the state hospital, until claimed by the rightful owner. In the event, however, that there is no such institution as a state hospital within the county where such sale shall take place, then and in that case, all such sums of money may be used by the court of sessions

for the use of the poor of said county, until called for by its proper owner.

Sec. 4. In all cases where goods, wares or merchandise, shall be offered for sale, as aforesaid, to pay charges for storage, it shall be the duty of the party offering the same to give written notice to the treasurer of the state hospital that such sale will take place, whereupon it shall be the duty of the treasurer of the state hospital to attend such sale, or appoint some one to attend such sale and make a settlement with the party, as directed in this act; should there be no state hospital in the county where such sale shall take place, then the county treasurer shall attend such sales, and make a settlement with the party as directed in this act.

Sec. 5. In no case shall chests or trunks containing the wearing apparel of an individual be sold under the provisions of this act, in less than twelve months from the time the same was stored, unless by express written agreement between the warehouse keeper and the owner of such chest or trunk, authority is given for the sale of the same at a time fixed.

Sec. 6. That in case of the death of any person having goods sold under the provisions of this act, the executor or administrator of such deceased person shall be entitled to receive the surplus, if any, after the payment of the warehouse or other proper charges on the same.

Sec. 7. That in all cases of sale of chests or trunks, containing wearing apparel, under the provisions of this act, such chests or trunks shall be opened and the goods exposed to public view, so that purchasers may judge of the value of the articles so offered for sale; *provided*, that all private papers of family reliques, found in such chests or trunks, shall be deposited with the county treasurer for safe-keeping, until called for by the owner, or person properly authorized to receive the same.

An Act in relation to warehouse and wharfinger receipts, and other matters pertaining thereto.

Approved April 1, 1878.

#### **Issuance of receipts for goods:**

That no warehouseman, wharfinger, or other person doing

a storage business, shall issue any receipt or voucher for any goods, wares, merchandise, grain, or other produce or commodity, to any person or persons purporting to be the owner or owners thereof, unless such goods, wares, merchandise, grain, or other produce or commodity, shall have been *bona fide* received into store by such warehouseman, wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt. Statutes of Cal. 1877-1878, p. 949, sec. 1.

**Issuing of receipt upon goods as security for money loaned:**

That no warehouseman, wharfinger, or other person engaged in the storage business shall issue any receipt or other voucher upon any goods, wares, merchandise, grain, or other produce or commodity, to any person or persons, as security for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain, or other produce or commodity, shall be, at the time of issuing such receipt, the property of such warehouseman, wharfinger, or other person, shall be in store and under control at the time of issuing such receipt or voucher as aforesaid. *Id.* sec. 2.

**Second receipts, issuance of :**

That no warehouseman, wharfinger, or other person as aforesaid, shall issue any second receipt for any goods, wares, merchandise, grain, or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncancelled. *Id.* sec. 3.

**Removal of goods when receipt issued :**

That no warehouseman, wharfinger, or other person as aforesaid, shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control, any goods, wares, merchandise, grain, or other produce or commodity for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt or receipts plainly indorsed thereon in ink. *Id.* sec. 4.

**Receipts classed :**

Warehouse receipts for property stored shall be of two classes: First, transferable or negotiable; and, second, non-transferable or non-negotiable. Under the first of these classes, all property shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement of the party shall be deemed a valid transfer of the property represented by such receipt, and may be in blank or to the order of another. All warehouse receipts for property stored shall distinctly state on their face for what they are issued, as, also the brands and distinguishing marks; and in the case of grain, the number of sacks, and number of pounds, and kind of grain; also the rate of storage per month or season charged for storing the same. *Id.* sec. 5.

**Receipts to be indorsed :**

No warehouseman, or other person or persons, giving or issuing negotiable receipts for goods, grain, or other property on storage, shall deliver said property or any part thereof, without indorsing upon the back of said receipt or receipts, in ink, the amount and date of the deliveries. Nor shall he or they be allowed to make any offset, claim, or demand other than is expressed on the face of the receipt or receipts issued for the same, when called upon to deliver said goods, merchandise, grain, or other property. *Id.* sec. 6.

**No delivery except on order :**

No warehouseman, or person or persons, doing a general storage business, giving or issuing non-negotiable or non-transferable receipts for goods, grain, or other property on storage, shall deliver said property, or any part thereof, except upon the written order of the person or persons to whom the receipt or receipts were issued. *Id.* sec. 7.

**Non-negotiable receipts, how marked :**

All receipts issued by any warehouseman or other person, under this act, other than negotiable, shall have printed across their face, in bold, distinct letters, in red ink, the words "non-negotiable." *Id.* sec. 8.

**Loss by fire :**

No warehouseman, person or persons, doing a general storage business, shall be responsible for any loss or damage to property by fire while in his or their custody, provided reasonable care and vigilance be exercised to protect and preserve the same. *Id.* sec. 9.

**Felony :**

Any warehouseman, wharfinger, person or persons, who shall violate any of the foregoing provisions of this act, is guilty of felony, shall be subject to indictment, and, upon conviction, shall be fined in a sum not exceeding five thousand dollars (\$5,000), or imprisonment in the state prison of this state not exceeding five years, or both. And all and every person aggrieved by the violation of any of the provisions of this act may have and maintain an action against the person or persons violating any of the foregoing provisions of this act, to recover all damages, immediate or consequent, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted under the act or not. *Id.* sec. 10.

**Carriers may retain goods until charges paid :**

When any goods, merchandise, or other property has been received by any railroad or express company, or other common carrier, commission merchants, innkeepers, or warehousemen, for transportation or safe-keeping, and are not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, innkeeper, or warehouseman, may hold or store the same with some responsible person until the freight and all just and reasonable charges are paid. Pol. Code, 1899, sec. 3152.

**Property unclaimed within sixty days to be sold :**

If no person calls for the property within sixty days from the receipt thereof and pays freight charges thereon, the carrier, commission merchant, innkeeper, or warehouseman may sell such property, or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given twenty

days' notice of the time and place of sale to the owner, consignee or consignor, when known, and by advertisement in a daily paper ten days (or if in a weekly paper, four weeks), published where such sale is to take place; and if any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor within sixty days after the sale. *Id.* sec. 3153.

#### **Property unclaimed, where to go:**

If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner. *Id.* sec. 3154.

#### **Carrier's responsibility ceases, when:**

After the storage of goods, merchandise, or property, as herein provided, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof, unless the same results from his negligence or want of proper care. *Id.* sec. 3155.

#### **Property upon which advances are made may be sold:**

When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property, and makes advances thereon, either to the owner or for freight and charges, he may, if the same is not paid to him within sixty days from the date of such advances, cause the produce, merchandise, or property on which the advances were made, to be advertised and sold as provided herein. *Id.* sec. 3156.

#### **Issuing fictitious warehouse receipts:**

Every person carrying on the business of a warehouseman, wharfinger, or other depositary of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument

is issued to a person as being the owner of such merchandise or as security for any indebtedness, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. Pomeroy's Penal Code, Cal. 1901, sec. 578.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Requisites of a prima facie case—Burden of proof, shifting thereof.*

Proof of the deposit and failure to redeliver in accordance with the terms of the contract makes a *prima facie* case against the warehouseman and the burden is upon him to excuse the failure to redeliver. But where the warehouseman shows the return of the goods stored and further that the contents of the packages have been lost by leakage or other inherent cause, the burden shifts to the plaintiff to prove affirmatively that the leakage was caused by the fault of the warehouseman. *Taussig et al. v. Bode & Haslett*, 134 Cal. 260.

*Same—Bailee protected by delivery in good faith to bailor.*

Where a warehouseman, after having goods in his possession, returns the same to his bailor without notice that a third party claims title thereto, such delivery made in good faith is a good defense in an action against a warehouseman. *Steele v. Marsicano*, 102 Cal. 666.

*Same—Insufficient evidence in action of detinue.*

In an action of detinue against a warehouseman for property stored with him, it was no defense for him to show that he had wrongfully disposed of the property in an attempt thereby to defeat the action of detinue which is for the recovery of the specific article. The defendant was not allowed to set up his own wrong to defeat the action; therefore the warehouseman was held liable for the value of the property. *Faulkner v. First National Bank*, 130 Cal. 258.

## B.

*Absolute contract to return property—Exception—Damage by the elements, construed to mean act of God.*

Where a warehouse receipt states that the goods are to be returned to the bailor, the one exception stated therein being "damage by the elements" the warehouseman is bound to de-

liver such goods upon presentation of receipt; the only valid excuse which he can make is for loss or damage resulting from act of God. *Pope v. Farmers' Union and Milling Co.*, 130 Cal. 139.

*Liability of warehousemen—Valid stipulation limiting same—Public policy.*

Agreement between a warehouseman and bailor under which the former claims exemption from liability from loss by fire, the elements, shrinkage, leakage, or natural decay, under a notice printed upon the margin of the warehouse receipt, in which it is stated that loss or damage from the above causes is at the owner's risk, it was held that the warehouseman was so exempt from liability and that there is no infringement of public policy by a stipulation to the above effect. *Taussig et al. v. Bode & Haslett*, 134 Cal. 260.

*Bill of sale—Delivery at warehouse to be weighed, effect on title—Attachment.*

The owner of stored wheat sold the same and certain other wheat which was not in the warehouse but, under the terms of the bill of sale, was to be delivered at the warehouse for the purpose of being weighed and the warehouseman was thereupon to show a certificate as to the correctness of its weight, such certificate to be in the name of the purchaser. When the goods had been so delivered but before the certificate had been issued to the buyer, it was attempted to attach the goods. It was held, that the delivery to the warehouseman constituted passage of title to the goods and that the attachment had been improperly made. *Greenbaum v. Martinez*, 86 Cal. 459.

*Sale of wheat by warehouseman who is also a dealer therein—Necessary evidence.*

Where a person is acting as a warehouseman for the storage of wheat and is also engaged in the business of buying and selling wheat, a sale by him to a purchaser will not be set aside in the absence of conclusive evidence that the wheat so sold belonged to the plaintiff and that it was stored with such warehouseman and then sold by him. *Davis v. McNear*, 101 Cal. 606.

*Sale of goods while stored—Order upon warehouseman—Bona fide purchaser protected.*

A sells to B part of the goods which he has stored with M, a warehouseman, and delivers to M an order authorizing B to remove the goods sold to him. B pays A a part of the purchase price thereof and gives him a note for the balance, in which it is stated that A shall have a lien on such goods as additional security for the payment of the note; B then sells the goods to a *bona fide* purchaser, C. *Held*, C takes clear of any lien of A upon the goods for the balance remaining due on the purchase price thereof. *Goldstone v. Merchants Ice and Cold Storage Co.*, 123 Cal. 625.

*Conversion—Defined to be a tort.*

In order to establish conversion a tortious act must be shown. *Steele v. Marsicano*, 102 Cal. 666.

*Same—Intermeddling in ignorance of owner's claim not conversion.*

Where one intermeddling with another's property does not assert title to it, this act does not constitute a conversion. There must be some act implying the exercise or assertion of title or dominion over the goods or some act inconsistent with the plaintiff's right of ownership or in repudiation of such right. *Id.*

*Same—Effect of refusal to deliver.*

A demand of the property and a refusal to redeliver it do not of themselves constitute a conversion. They are merely evidence from which a conversion may be established and as evidence may be repelled by proof of inability to comply, the plaintiff must also show the ability of the defendant to comply with the demand at the time it was made. *Id.*

*Same—Same—Held to be conversion.*

Where a plaintiff avers that demands were made upon defendant for the redelivery of goods and that defendant persistently refused to so deliver them, it was *held* that this constituted a sufficient averment of conversion. *Faulkner v. First National Bank*, 130 Cal. 258.

*Same—Liability for.*

Where a warehouseman, knowing of a claim of title of a third person to wheat stored in his warehouse in the name of such third person's broker, the delivery of the wheat, without notice to such third person, to an assignee of the broker is conversion thereof, for which the warehouseman is liable. *Hanna v. Flint et al.*, 14 Cal. 74; *Wilson v. Southern Pacific R. R. Co.*, 62 Cal. 164.

*Same—Same—Goods still in the warehouse—False statement as to sale for storage charges—Return of warehouse receipt not demanded.*

Where it appeared that the defendant, a warehouseman, had refused to deliver property of the plaintiff which he held on storage, stating that the same had been sold in order to pay charges and at the same time demanded a cash amount, for which he agreed to deliver the goods, it was held, that such statements amount to a conversion of the property, for which the warehouseman was liable, and he could not set up a defense that he justified his refusal to deliver the goods on the ground that the receipt therefor had not been tendered to him, it appearing from evidence that he had made no demand for the receipt. *Briggs v. Haycock*, 63 Cal. 343.

*Same—When mortgagee can maintain action.*

Where a warehouseman delivered harvested crops to a vendee of the assignee in insolvency of the mortgagor of the crops, the mortgagee may maintain an action for conversion against the warehouseman for such wrongful delivery. *Compodonico v. Oregon Improvement Co.*, 87 Cal. 566.

*Same—Variance as to date—Effect.*

Where in a complaint in an action for conversion it is alleged that the conversion was done by the defendant on a particular day and by the proof at the trial it is shown that the conversion took place upon another day, subsequent thereto, but prior to the commencement of action, such variance is not fatal. *Bancroft v. Haslett et al.*, 106 Cal. 151.

*Warehouse, real property.*

In the absence of evidence to show that a warehouse, 100 feet by 40 feet (100 x 40), was not attached to the ground, it will be presumed that it was so attached and will accordingly be treated as real estate. *Santa Ana v. Pritchard et al.*, 126 Cal. 600.

*Allegations as to ownership of warehouse receipt—Presumptions therefrom—General demurrer.*

Where a complainant in an action against warehousemen alleges that the defendants were, at the times named therein, engaged in the business of warehousemen and as such doing a general storage business and that prior to a certain date plaintiff delivered to the defendants for storage and stored with them certain quantities of barley and received therefor a warehouse receipt, copy of which is set forth in the complaint, and further alleges that the plaintiff has at all times since the delivery of such property to the warehousemen, and is at the time of bringing the action, the sole owner and holder of said receipt and that on a certain date plaintiff presented receipt to defendants and thereupon demanded delivery of the barley, the defendants refusing to comply with said demand ; it was *held*, upon general demurrer, which set forth that it was nowhere alleged in the complaint that at the time of the commencement of the action plaintiff was the owner and entitled to the possession of the property claimed, that the presentation of the warehouse receipt in exactly the same condition in which it was received by complainant was sufficient allegation of the ownership of the property. The court, however, intimated that a special demurrer might have been sustained. *Visher v. Smith*, 91 Cal. 260.

*Statements made by a warehouseman—When considered part of res gestæ.*

When it appears that a warehouseman made statements, at the time of the removal of wheat from his warehouse, pertaining to the ownership thereof, such statements will be received in evidence as part of the *res gestæ*. *Garoutte v. Williamson*, 108 Cal. 135.

*Claim and delivery—Auxiliary action—Pleading.*

In California there is no form of action which is known technically as "claim and delivery." The sections in the Code, under this title, provide an auxiliary remedy for the recovery of personal property. In a case where an auxiliary remedy is not invoked the general rules of pleading apply. *Faulkner v. First National Bank*, 130 Cal. 258.

## C.

*Safe deposit—General principles.*

Where one rents a safe deposit box from a bank the bank becomes his bailee for hire and is bound to exercise ordinary care in the preservation and safe-keeping thereof, in the absence of a special agreement to the contrary. *Cussen v. Southern California Savings Bank*, 133 Cal. 534.

*Same—Modified by agreement—Limitations of such agreement.*

Where the lessor of a safe deposit box and the lessee thereof agree that the former "shall use diligence that no unauthorized person shall be admitted to any rented safe, and beyond this the lessor shall not be responsible for the contents of any safe rented it." Such agreement will not be interpreted to mean that the lessor is thereby relieved from liability to use proper care in the selection of employees to guard such safes, nor is such contract to be in any manner construed as a general waiver by the lessee of the lessor's obligation of the bailee for hire. *Id.*

*Same—Duplicate keys—Retention of one by bailee, not proper care—*Prima facie* case.*

*Held*, jury was fully justified in declaring defendant wanting in the exercise of proper care when it failed to deliver to plaintiff both keys of a safe deposit box which it rented to him, thus leaving outstanding, in the hands of some one, a key to the box. As a further lack of proper care, it was shown that the room containing the boxes was in charge of a young man of about the age of seventeen years, who had been in the employ of the defendant for but three months. A *prima facie* case is made out by showing a deposit in the box and subsequent loss. *Id.*

*Same—Same—Section 1840, Civil Code, not applicable.*

In such a case as the above, the defendant cannot find relief under section 1840 of the Code which declares that the liability of a depositary for negligence cannot exceed the amount which he is informed, by the depositor, or has reason to suppose, the articles deposited to be worth. The very manner of conducting the business of renting safe deposit boxes contemplates that the bailee shall not know the value of the thing deposited. *Id.*

## F.

*Common carrier—Liability as warehouseman.*

A common carrier becomes liable as a warehouseman only after the transit is terminated and the consignee has been notified of the arrival of the goods. *Wilson v. California Central R. R. Co.*, 94 Cal. 166; *Jackson v. Sacramento Valley R. R. Co.*, 23 Cal. 268; *Hoyt v. Railroad*, 68 Cal. 644.

## H.

*Action for storage charges—When earned—Entire contract.*

Where a warehouseman contracts to store hay from October 17th to the 1st of the following June and during such interval the warehouse and contents are destroyed by fire, he cannot maintain an action for the recovery of his charges. The contract is an entire one and his charges are not due until he has complied with the terms thereof. In the absence of a stipulation in such contract that a proportional amount of the storage charges should be earned as the time expires, there can be no recovery unless contract has been fully carried out. *Cunningham v. Kenney*, 105 Cal. 118.

*Improper sale for storage charges.*

In an action brought by bailor against a warehouseman for conversion of a piano, the defendant alleged that the piano was sold for lawful storage charges and that payment of such charges had been refused by the plaintiff when demanded of him and that there is now still due the defendant money for the storage of the piano. The findings showed that the defendant did not come into lawful possession of the piano, that plaintiff had de-

manded its return, which was refused, and that it had been taken from the plaintiff against his will. It was *held* on the above findings, that the plaintiff was entitled to damages and a request for further evidence was properly denied. *Bancroft Co. v. Haslett*, 106 Cal. 151.

*Sale for storage charges—Liable for conversion unless proper notice given—Ignorance of the owner's actual address.*

Plaintiff brought suit against defendant, a warehouseman, for conversion of household goods stored with him; it appeared on the trial that the goods had been sold for storage charges but that the owner had not received actual notice of such sale, as is required. It further appeared that warehouseman had failed to note address of the plaintiff at the time goods were stored. It was *held*, that such sale, in the absence of the actual notice, as required, constituted a conversion for which the defendant was liable and that the fact that the defendant had failed to note the place of residence of the plaintiff constituted no excuse for the absence of actual notice. *Stewart v. Naud*, 125 Cal. 596.

*Same—When sheriff bailor—Liability for conversion if he allows sale for storage charges—Order of court necessary.*

If a sheriff who has attached property, and in order to protect himself, stores the same, he is personally liable to the owner thereof, upon his official bond, if he allows such property to be sold for unpaid storage charges.

It was the duty of the warehouseman to procure an order of the court authorizing such sale; in such a case, the action of the warehouseman is that of his principal, therein, and in spite of the fact that he held a statutory lien on such property for the storage charges there should have been no sale thereof in the absence of an order from the court. *Aigeltinger v. Whelan*, 133 Cal. 110.

*Lien for charges—What constitutes a waiver thereof.*

If a warehouseman states to an officer of the court, who is about to take possession of property stored with him, that there are no charges due upon such property, this constitutes

a waiver of his lien for all of such charges as may have then existed. *Blackman v. Pierce*, 23 Cal. 508.

*"All claims and liens," held to include cartage charges.*

Under the terms of a contract between a vendor and vendee of a warehouse, the vendee agreed to collect "all claims and liens" that the vendor then had against the property stored in his warehouse. This was *held* to include all charges made by the vendor for the cartage of the goods to his warehouse. *Hurlford v. Neale*, 107 Cal. 610.

## I.

*Segregation—What constitutes—Effect of—Mortgage of stored goods.*

Where the mortgagee of one thousand sacks of flour stored with a warehouseman, comes to said warehouseman and exhibits to him the warehouse receipt for such flour and requests that one thousand or more sacks of such flour be separated from the entire amount of flour stored by the mortgagor, and this is accordingly done; it was *held* that this constituted a good segregation, and thereupon the warehouseman became the agent of the mortgagee. *Squires v. Payne*, 6 Cal. 654; *Cartwright v. Phœnix*, 7 Cal. 281.

*Same—When necessary.*

When a vendor only sells part of the goods on storage, those sold, if stored together and of the same mark, must be separated from the larger mass in order to change the possession; but where *all* the goods of the vendor in the hands of a third party are sold, the change of possession is completed by the delivery of the order, taking a new receipt, and entry of the transaction on the books of the warehouseman. *Horr v. Barker*, 8 Cal. 603; *S. C.*, 11 Cal. 393; *S. C.*, 6 Cal. 489, cited in *Ghirardelli v. McDermott*, 22 Cal. 539, and *Davis v. Russell*, 52 Cal. 611.

*Same—Same—Transfer on books.*

A had a large quantity of flour stored in the warehouse of B. He sold a portion of it to C, and gave an order therefor on B, who accepted the same and gave C in exchange a receipt for the flour purchased by him, and transferred it on his books

to the account of C. There was no separation of specific portion from the flour of A as the property of C and the whole was subsequently seized in an action against A. *Held*, that the sheriff was not liable to C, in the absence of segregation of the flour, but that B was estopped by his receipt from denying his liability. *Adams v. Gorham*, 6 Cal. 69.

*Same—Want of—Estoppel.*

Warehousemen who give their receipt for goods on storage, are estopped from setting up a want of segregation of the goods received for from other goods, in an action against them by the holder of the receipt, for a conversion of the goods by a seizure in an action against a vendor of the plaintiff. And this, although the warehousemen are the attaching creditors, and although the sheriff making the seizure was not liable, by reason of there being no segregation. *Goodwin v. Scannell et al.*, 6 Cal. 541.

*Misdelivery—Carrier acting as warehouseman.*

A carrier is liable if it delivers goods to a person who presents a bill of lading therefor which is unindorsed, and such person not being identified to such a carrier as one having an interest in such goods. *Cavallarp v. Texas and Pacific Railway Co.*, 110 Cal. 348.

**K.**

*Attachment of goods in warehouse—Officer's possession by aid of keeper—Evidence.*

An attachment of stored goods is properly made by an officer if he takes actual possession thereof and retains such possession by the assistance of a keeper whom he leaves in personal charge thereof. He may show these facts by parol evidence. *Sin-sheimer v. Whately*, 111 Cal. 378.

**L.**

*Trover—Transfer of warehouse receipt—Conversion—Burden of proof.*

A plaintiff stored wheat with a warehouseman and received warehouse receipt therefor; there was no other wheat stored in

the warehouse at the time and subsequently the warehouseman issued a receipt to another, for certain quantities of wheat, less than the amount stored therein by the plaintiff. Such other person negotiated the receipt to the defendant, who obtained possession of the wheat which it represented. It further appeared that plaintiff had pledged his receipt as collateral security for the payment of the loan, but the evidence as to the existence of such loan, date thereof, and its payment was not conclusive. The court instructed the jury that, if they found that the plaintiff was the owner of the receipt at the time that the defendant obtained possession thereof, they should find for the plaintiff, and the jury so found. Upon appeal, this instruction was *held* correct. *Garoutte v. Williamson*, 108 Cal. 135.

#### N.

*Loss by fire—Bailor not affected by contract between warehouseman and railroad regarding destruction of warehouse by fire—Negligence.*

A warehouseman constructs a warehouse upon land belonging to a railroad and adjacent to its tracks; in the lease between them it was provided that the railroad should not be liable for any loss or damage done to the warehouse, or its contents, as a result of fire communicated by its engines. In a case for loss from such cause it was *held*, that a person storing his goods in such warehouse could recover from the railroad on showing that the fire was a result of its negligence. *King v. Southern Pacific Co.*, 109 Cal. 96.

*Same—Of incendiary origin—Never “act of God”—Negligence.*

Where wheat was destroyed by fire in a warehouse, such fire being of incendiary origin, the warehouseman is liable therefor and cannot set up a defense that the fire occurred without his fault. Negligence does not enter into the question in such cases and its absence will not exonerate the warehouseman. *Pope v. Farmers' Union and Milling Co.*, 130 Cal. 139.

*Same—Burden of proof on plaintiff—Negligence.*

Where it is shown that the warehouse, containing goods for

which an action was brought, was destroyed by fire, the burden of proof is on the plaintiff to show that such fire was caused by the negligence of the warehouseman. *Wilson v. Southern Pacific R. R. Co.*, 62 Cal. 164.

*Action for recovery of goods embezzled from warehouse—Warehouseman may bring one action for the recovery of property belonging to several bailors.*

Where goods belonging to different bailors have been stolen from a warehouse by an employee therein and are found in the hands of a third person, the warehouseman may sue for the recovery of all goods so found, and objection made by defendant that separate actions should be brought in the case of each of the warehouseman's bailors is not well taken. *Bode v. Lee*, 102 Cal. 583.

*Same—Same—Burden of proof.*

In the above case, if the defendants are unable to prove that they came into possession of the property in ignorance of the fact that it had been embezzled from the plaintiff, the burden of proof will be upon them to prove that the identical goods found in their possession are not the missing portion of the goods which the plaintiff still retains in his warehouse. *Id.*

*Negligence—When failure to inspect stored goods is not ignorance—Leakage—Stipulation in warehouse receipt—Instructions—Reversible error.*

Where a warehouseman receives spirits for storage and the receipt given therefor states that the warehouseman is not responsible for loss resulting from leakage, and other specified causes, this is *held* to be a notice to the bailor, and the mere failure of the warehouseman to inspect the barrels containing such spirits cannot be held to constitute negligence on his part. Where, in a trial of such a case, the judge instructs the jury that if they find that the leakage was due to the original negligence of the plaintiffs in storing these spirits in leaky casks the defendant will, nevertheless, be liable for the loss, if, by the exercise of ordinary care, he could have discovered and cured the defect or prevented the loss; such instruction *held* to be reversible error. *Taussig et al. v. Bode & Haslett*, 134 Cal. 260.

## Q.

*Warehouse receipt—Definition.*

A warehouse receipt has been defined to be a written contract between the owner of the goods and the warehouseman, the latter to store the goods and the former to pay for that service. *Sinsheimer v. Whately*, 111 Cal. 378; (*Hale v. Milwaukee Dock Co.*, 29 Wis. 488).

*Same—Issued in the name of one not the depositor—Effect.*

Where A deposits fruit in a warehouse and takes a receipt therefor in the name of B, the reason for his so doing being unexplained to the warehouseman, and A borrows money from the warehouseman with such receipt as collateral security, and afterwards obtains a new receipt issued in his own name, A will be regarded as the owner of the goods, and an action by B against the assignee of the warehouseman cannot be maintained, it not appearing that any privity had existed between them. *Lowrie et al. v. Salz et al.*, 75 Cal. 349.

*Same—Who may issue.*

It is only persons who pursue the calling of warehousemen—that is, receive and store goods in warehouses as a business for profit—who have the power to issue a technical warehouse receipt, the transfer of which is a good delivery of the goods represented by it. *Sinsheimer v. Whately*, 111 Cal. 378.

*Same—Negotiability.*

Warehouse receipts are negotiable unless they have the word "Non-negotiable" printed, in red ink, across their face, and when negotiable an indorsement of the receipt operates as a valid transfer. *Cavallaro v. Texas and Pacific Railway Co.*, 110 Cal. 348; *Garoutte v. Williamson*, 108 Cal. 135; *Bishop v. Fulkerth*, 68 Cal. 607; *Davis v. Russell et al.*, 52 Cal. 611.

*Same—Same—Consideration.*

A pre-existing debt constitutes a sufficiently valuable consideration for a transfer of a warehouse receipt. *Davis v. Russell et al.*, 52 Cal. 611; *Bishop v. Fulkerth*, 68 Cal. 607; *Cavallaro v. Texas and P. R. R. Co.*, 110 Cal. 348.

*Same—Same—Effect of order.*

Under act of 1878 (Statutes, 1878, page 949) a warehouseman is authorized to deliver goods in cases where a negotiable receipt was issued therefor only upon return and delivery to him of such receipt. In a case where a non-negotiable receipt had been issued the warehouseman can deliver the goods upon a written order of the person who had deposited them. Where a warehouseman receives an order from a bailor directing him to deliver goods standing to his credit, the warehouseman cannot be presumed to have concluded that the receipt issued therefor was a negotiable receipt, but, on the contrary, the inference is that it was non-negotiable. *Goldstone v. Merchants' Ice & Cold Storage Co.*, 123 Cal. 625.

*Same—Assignment of mortgage—Preference under the insolvency act.*

The assignment of a warehouse receipt made by the mortgagor to the mortgagee on the day of the filing of the mortgagor's petition of insolvency, was not viewed as a preference under section 55 of the insolvency act, as the value of the property was less than the debt for which it was mortgaged and nothing was withdrawn from the reach of the assignee representing the creditors of the mortgagor. If it be considered that the effect of this was in form a transfer of the legal title to the property described in the receipt it was nevertheless valid as against the assignee. *Campodonico v. Oregon Improvement Co.*, 87 Cal. 566.

*Same—Delivery when a receipt outstanding—Query.*

Where a warehouseman issued a receipt to one S., who had made a loan on the wheat stored, to the owners, E. & H.—query, whether they could have refused to deliver the wheat to E. & H. while the receipt to S. was outstanding. *Hanna v. Flint*, 14 Cal. 74.

*Same—Weighing tags held not to constitute warehouse receipt.*

The mere transfer of weighing tags upon which it was stated, "Weighed for —— forty (40) sacks beans" cannot be held to constitute warehouse receipts therefor sufficient to pass the

title to the property represented. The court further *held*, that there must be something on the face of the instrument to indicate that a contract of storage had been entered into between the parties. Therefore, in such a case, although the owner had pledged such weighing tags as security for a loan, the property represented thereby could be reached by an attaching creditor. *Sinsheimer v. Whitley*, 111 Cal. 378.

*Same—Delivery of order on warehouseman—Effect.*

As between parties, the delivery to a purchaser of an order on a warehouseman for the goods was clearly sufficient to pass the title thereto and rendered the purchaser liable for the price thereof. *Ghirardelli v. McDermott*, 22 Cal. 539.

*Same—Forgery of—Warehouseman protected.*

Where one purchases a warehouse receipt, which was in fact a forgery, the same being executed by a former employee of the warehouseman, and the person who negotiated the receipt to the purchaser had knowledge of the fraud, the warehouseman will not be liable on such a receipt. *McNear v. Brown & Hershey*, 122 Cal. 621.

*Same—Same—What a warehouseman may offer in evidence.*

In such a case as above set forth, in an action brought against a warehouseman for the recovery of the value of the wheat represented in the bogus receipt, the warehouseman may show the date on which the clerk, who executed such false receipt, left his employer, and further, that the grain designated in the receipt was not in his warehouse at the time stated therein. *Id.*

**R.**

*Bill of lading—Stating “contents unknown.”*

A common carrier cannot protect itself by the statement in a bill of lading, “contents unknown” when there was every opportunity to know the same and the cars were plainly marked with statement of the contents in large letters. *Pierce v. Southern Pacific Co.*, 120 Cal. 156.

*Same—Stipulations requiring true value—Limitation of liability.*

A stipulation in a bill of lading to the effect that the carrier

would not be liable for a greater sum than fifty dollars, if the package were lost, unless its true value were given, *held* to be valid one. This true even though the loss resulted from the negligence of the carrier. *Michalitschke Brothers v. Wells, Fargo & Co.*, 118 Cal. 683; *Hart v. Penna. R. R. Co.*, 112 U. S. 341.

*Same—Effect of transfer—Same as warehouse receipt.*

An assignment of a bill of lading passes title to the goods represented thereby. The effect of the assignment of a warehouse receipt does not differ materially from that of the assignment of a bill of lading. *Davis v. Russell*, 52 Cal. 611.

## T.

*Injuries to persons by warehousemen—Visitor injured by heavy bale falling upon him—Negligence.*

Where a person came to a warehouse for the purpose of delivering a paper there, as he was in the habit of doing daily, and, while passing through a passageway, through which persons having business at the warehouse were accustomed to pass, was killed by having a large bale of goods thrown upon him by employees of the warehouseman, the throwing of such bales into the passageway, to which the public had access, was *held* to constitute negligence, and the fact that the deceased was unable to escape, after hearing the warning shouts of the employees, was held not to constitute contributory negligence on the part of the deceased. *O'Callaghan v. Bode*, 84 Cal. 489.

*Goods sold by assistant foreman—Larceny—Embezzlement.*

Where an assistant foreman of a warehouse sells property stored therein he is guilty of larceny. The defense that the crime was technical embezzlement will not stand, as embezzlement is a species of larceny. *The People v. Perini et al.*, 94 Cal. 573.

## CHAPTER V.

## COLORADO.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Public warehouses defined :**

Warehouses, granaries and elevators maintained for general use of the public for storage purposes shall be deemed public warehouses. L. 1891, p. 279, sec. 1.

**Property transferred—Warehouse receipt—“Not negotiable” :**

Warehouse receipts for property stored in any public warehouse shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt and may be made either in blank or to the order of another, and the delivery of the receipt so indorsed shall be a valid delivery of the property mentioned therein: *Provided, however,* That all warehouse receipts which shall have the words “Not negotiable” plainly written, printed or stamped on the face thereof shall be exempt from the provisions of this section. *Id.*, sec. 2.

**Freight uncalled for in thirty days may be stored and retained for charges—Notice in three days :**

When any goods, merchandise or other property shall have been received by any railroad or express company, or other common carrier, commission merchants or warehouseman, and shall not be received by the owner, consignee, or other authorized person, until the expiration of thirty days, it shall be lawful for said carrier, commission merchant, or warehouseman to hold the same, or the same may be stored, with some responsible person, and retained until the freight and storage, and all just and reasonable charges be paid by the owner or consignee, or by some person for him: *Provided, however,* That

said railroads or express companies or other common carriers, commission merchants, or warehousemen, shall notify the owners or consignees of the receipt of such goods, merchandise, or other property, within three (3) days from the receipt thereof. L. 1874, p. 304, sec. 1; G. L. 1877, pp. 645, 646, sec. 1864; G. S. 1883, p. 1005, sec. 3432.

**Not called for in ninety days, be sold—Twenty days' publication—Surplus :**

If no person having a right thereto calls for said goods, merchandise or other property, within ninety days from the receipt thereof, and pay freight and charges thereon, it shall be lawful for such carrier, commission merchant or warehouseman, to sell such goods, merchandise or other property, or so much thereof, at auction to the highest bidder, as will pay said freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee or consignor, if known, and by advertisement in a daily paper (or if in a weekly paper, four (4) weeks), published where such sale is to take place; and if any surplus be left after paying freight, storage, cost of advertising, and all other just and reasonable charges, the same shall be paid over to the rightful owner of said property at any time thereafter, upon demand being made therefor, within ninety (90) days. L. 1874, pp. 304, 305, sec. 2; G. L. 1877, p. 646, sec. 1865; G. S. 1883, p. 1005, sec. 3433.

**Surplus, when not called for, paid into treasury, subject, etc. :**

If the rightful owner or his agent fail to demand such surplus within ninety (90) days of the time of such sale, then said surplus shall be paid into the county treasury, subject to the order of the owner; and if the owner do not demand such money of the county treasurer within one (1) year, then same shall be forfeited and paid to the general school fund of the county. L. 1874, p. 305, sec. 3; G. L. 1877, p. 646, sec. 1866; G. S. 1883, pp. 1005, 1006, sec. 3434.

**When carrier's liability ceases—Liability of warehouseman:**  
After the storage of goods, merchandise or property, as herein

provided, the responsibility of the carrier shall cease, nor shall the person with whom the same may be stored be liable for any loss or damage, on account thereof, unless the same shall result from his negligence or want of proper care. L. 1874, p. 305, sec. 4; G. L. 1877, pp. 646, 647, sec. 1867; G. S. 1883, p. 1006, sec. 3435.

**Commission man—Warehouseman—May sell in ninety days—Publication :**

When any commission merchant or warehouseman shall receive on consignment, or on storage, produce, merchandise, or other property, and shall make advances thereon, either to the owner, or for freight and charges, and no time be agreed upon for the repayment of the same, it shall be lawful for the person who makes such advances, if the same be not paid to him within ninety (90) days from the date of such advances, to cause the produce, merchandise or property on which the advances were made to be advertised and sold as provided in the second section of this act; and if a time for the repayment of such charges be agreed upon, then such notice of sale may be made immediately upon default of such payment. L. 1874, pp. 305, 306, sec. 5; G. L. 1877, p. 647, sec. 1868; G. S. 1883, p. 1006, sec. 3436.

**Perishable goods—Notice—Sale—Notice to owner—Affidavit—Sale without notice :**

In case the goods, merchandise, or other property referred to in the preceding sections, shall consist of articles which will perish or become greatly damaged by delay in disposing of the same, then it shall be lawful for such carrier, commission merchant or warehouseman, unless the charges on such goods are paid, and they are claimed, and taken away, to sell all of the same, either at auction or at private sale, for the best price that may reasonably be obtained therefor, and to dispose of the proceeds of such sale as provided in section two (2) of this act: *Provided, always,* That before any such sale is made notice shall be given to the owner, or consignee, or the agent of him, of the intent to sell and dispose of such goods, merchandise or other property, and the time and place of such sale, either by

personal notice or by letter addressed and properly mailed to him, which said notice shall be given at least twenty-four (24) hours before said sale, if the consignee, or owner, or agent of him, so notified shall reside at the place where such goods are; but if the person to be so notified of such sale shall reside at a distance, then the time of such sale shall be so appointed in said notice as to allow him, in addition to the twenty-four (24) hours above mentioned, a reasonable length of time to claim said goods, or to attend such sale; and if, upon reasonable inquiry, the residence of such consignee, owner, or agent cannot be learned, then upon the affidavit of such carrier, commission merchant or warehouseman, or some person in his or their behalf, to be filed and preserved by the carrier, commission merchant, or warehouseman, and by them to be produced and exhibited to any person claiming an interest in the goods sold, or to be sold, as aforesaid, such goods, merchandise and other property may be sold as aforesaid without notice. L. 1874, pp. 306, 307, sec. 6; G. L. 1877, pp. 647, 648, sec. 1869; G. S. 1883, p. 1006, sec. 3437.

**Above statute construed :**

The giving of notice twenty-four hours before the sale, as provided in this statute, must be strictly complied with. *Martin v. McLaughlin*, 9 Colo. 153.

**Common carrier of freight and passengers has lien on goods and baggage :**

Every common carrier of goods and passengers who shall, at the request of the owner of any personal goods, carry, convey or transport the same from one place to another, and any warehouseman or other person who shall safely keep or store any personal property at the request of the owner or person lawfully in possession thereof, shall in like manner have a lien upon all such personal property for his reasonable charges for the transportation, storage or keeping thereof, and for all reasonable and proper advances made thereon by him, in accordance with the usage and custom of common carriers and warehousemen. L. 1883, p. 237, sec. 2; G. S. 1883, p. 660, sec. 2119.

**False warehouse receipt—Penalty :**

That no warehouseman, wharfinger or other person shall issue any receipt or other voucher for any goods, wares, merchandise, grain or other produce or commodity to any person or persons purporting to be the owner or owners thereof, unless such goods, wares, merchandise, or other produce or commodity shall have been *bona fide* received into store by such warehouseman or wharfinger or other person, and shall be in store and under his control at the time of issuing such receipt. R. S. 1868, p. 233, sec. 168; G. L. 1877, p. 309, sec. 768; G. S. 1883, p. 344, sec. 890.

**Issuing false warehouse receipts as security—Penalty :**

That no warehouseman, wharfinger or other person shall issue any receipt or other voucher upon any goods, wares, merchandise, grain or other produce or commodity, to any person or persons, as security for any money loaned or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity, shall be, at the time of issuing such receipt, the property of such warehouseman, wharfinger or other person, and shall be in store and under his control at the time of issuing such receipt or other voucher as aforesaid. R. S. 1868, p. 233, sec. 169; G. L. 1877, p. 309, sec. 769; G. S. 1883, p. 344, sec. 891.

**Duplicate receipts prohibited :**

That no warehouseman, wharfinger or other person shall issue any second receipt for goods, wares, merchandise, grain or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncancelled. R. S. 1868, p. 233, sec. 170; G. L. 1877, pp. 309, 310, sec. 770; G. S. 1883, pp. 344, 345, sec. 892.

**Selling shipping goods, by warehouseman, wrongfully :**

That no warehouseman, wharfinger or other person shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control, any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the per-

son or persons holding such receipt. R. S. 1868, p. 233, sec. 171; G. L. 1877, p. 310, sec. 771; G. S. 1883, p. 305, sec. 893.

**Warehouseman—Violating deemed cheat—Penalty—Damages :**

Any warehouseman, wharfinger or other person who shall violate any of the foregoing provisions relating to warehousemen, shall be deemed a cheat, and be subject to indictment, and upon conviction shall be fined in any sum not exceeding one thousand (1,000) dollars, and be imprisoned in the penitentiary of this state not exceeding five years; and all and every person aggrieved may have and maintain an action on the case against the person or persons violating any of the foregoing provisions relating to warehousemen, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under the foregoing sections or not. R. S. 1868, pp. 233, 234, sec. 172; G. L. 1877, p. 310, sec. 772; G. S. 1883, p. 345, sec. 894.

**Carriers, warehousemen, etc., guilty of embezzlement—Penalty :**

A carrier, warehouseman, factor, storage, forwarding or commission merchant, or his clerk, agent or employee, who, with intent to defraud, sells, or in any way disposes of, or applies or converts to his own use, any bill of lading, custom-house permit, or warehousekeeper's receipt, intrusted to or possessed by him, or any property intrusted or consigned to him, or the proceeds or profits of any sale of such property, or fail to pay over such proceeds, deducting charges and usual commissions, shall be adjudged to be guilty of embezzlement, and upon conviction thereof, shall be punished as follows: When the value of the property embezzled, as aforesaid, is twenty dollars, or less, then by imprisonment in the county jail for a period not exceeding six months; when the value of the property embezzled, as aforesaid, is over twenty dollars, then by imprisonment in the state penitentiary for a period of not less than one or more than two years. L. 1885, p. 202, sec. 1.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Conversion.*

Where a bailee pledges property which has been intrusted to him and the pledgee accepts the same in good faith, believing the property to belong to such bailee, the right of the owner therein is not defeated and he may recover the property or its value from the pledgee. The pledging of property by a bailee constitutes conversion thereof. *Gottlieb v. Hartman*, 3 Colo. 53.

## B.

*No title in depositor—Judgment for intervenor.*

An action was brought against a warehouseman for the conversion of goods stored with him in which action one B intervened claiming the title to the property. The complaint alleged that the plaintiff had loaned money to the depositor, who had, in turn, assigned the warehouse receipt issued for the goods to the plaintiff. That the plaintiff had paid all the storage charges due the defendant and demanded the goods and had been met with a refusal to deliver. The defendant warehouseman answered and denied that the property belonged to the original depositor, alleging that he had stolen the same and that in reality it belonged to one B. The defendant further alleged that he had received the goods in ignorance of the want of title of the depositor to the goods. Plaintiff's replication averred that the defendant was estopped to deny the title of his depositor and that the plaintiff was in ignorance of the matter set forth by the defendant concerning said lack of title. Subsequent to the filing of the foregoing pleading, B intervened and in his petition set forth that the property had been in his possession as sheriff pursuant to an attachment issued in another action and that at the request of the attorney for the plaintiff therein he had appointed the depositor his custodian, who had without knowledge of the intervenor deposited the goods in the warehouse of the defendant. On the above stated facts the jury found for the intervenor, that he was entitled to the possession of the property and assessed its value.

On this verdict the court entered judgment in favor of the intervenor and against the *plaintiff* for the sum found by the jury. On appeal it was *held* that the judgment entered by the court against the plaintiff was without warrant from either the petition or verdict; that by the verdict of the jury possession of the property was awarded to the intervenor and the value thereof was assessed, but there was no finding either against the plaintiff or the defendant specially. That the judgment did not follow the verdict and it was against a party who had incurred no liability to the intervenor. Further that as no judgment had been rendered for or against the defendant warehouseman, he was a stranger to the case on appeal. The case was, therefore, reversed and a new trial ordered. *Gottlieb v. Barton*, 13 C. A. 147.

*Pledge—By way of warehouse receipt—Statutes pertaining to chattel mortgages do not apply.*

Where money had been borrowed upon a warehouse receipt as collateral security, it was contended that the statute relating to the recording of chattel mortgages applied. It was *held*, that while the transaction was of the nature and effect of a chattel mortgage instead of a mere pledge, that it could scarcely be claimed that the delivery of the possession required by the statute was intended to alter or enlarge the meaning of the language there used beyond its ascertained legal sense, or to abrogate any of the settled and well recognized common-law modes of the delivery of personal property. That, therefore, the relation of the parties in respect to their rights to the property is unaffected by the chattel mortgage act. *Spangler v. Butterfield*, 6 Colo. 356.

## N.

*Loss by fire—Storing of powder in a warehouse, negligence—Proximate causes—Questions for the jury.*

Where the evidence showed that defendants, who were engaged in the business of warehousemen, had stored a large quantity of powder in the warehouse, along with plaintiff's goods, that a fire ensued and that the persons engaged in suppressing the fire were prevented, by the presence of the powder

in the warehouse, from removing plaintiff's goods; in such a case, the question whether the presence of the powder was the proximate cause of the loss of the goods is one for the jury. The storing of powder in a warehouse situated in the city, *held* to constitute negligence on the part of the warehouseman. *White v. Colorado Central R. R. Co.*, 3 McCrary (U. S. C. C.) 559; writ of error to U. S. Supreme Court dismissed, 101 U. S. 98.

*Loss by theft—Breach of agreement to compromise—Action based on agreement to compromise alone.*

The defendant warehouseman was sued for a sum of money alleged to be due the plaintiff pursuant to an agreement made between them by which the warehouseman agreed to pay to the plaintiff a certain sum, as a compromise of the claim of the plaintiff against the defendant, for goods lost while stored in the warehouse of the latter. It appeared that the defendant had paid part of the sum due under such agreement and had failed to pay the balance. It was contended in behalf of the defendant that he was not originally liable, under the law as a warehouseman, for the loss. It was *held* that the action was not brought upon the original liability of the defendant but upon the compromise agreement and that, therefore, this contention could not be sustained. *Swen v. Green*, 9 Colo. 358.

#### Q.

*Warehouse receipt—Transfer of—Requisites—Consideration.*

The assignment and delivery of a warehouse receipt passes the title of the goods represented to the transferee. In order to validly accomplish this result there must be: first, the assignment and delivery of the receipt, the property represented thereby must be in existence and stored at the place designated therein; second, a valid consideration which may consist of a pre-existing debt, or a transfer as collateral security. *Hill v. Colo. Nat. Bank*, 2 C. A. 324.

*Same—Fraudulent transfer, question for jury.*

The question whether or not the transfer of a warehouse receipt was procured with fraudulent intent, is one of fact for

the determination of the jury. *Marsh v. Cramer*, 16 Colo. 331.

*Same—As collateral—Purchase price for goods not paid—Pledgee protected.*

A warehouseman issued his receipt to the consignee and purchaser of goods and had no notice at the time that the purchase price had not been paid. It appeared that the purchaser had given his note to the vendor as payment for the goods. After the arrival and storage of the goods in the warehouse, the purchaser procured a loan and pledged the receipt as security therefor. Subsequently this loan was paid out of the proceeds of another loan, the warehouse receipt being indorsed to the second lender as security. The warehouseman had been notified of these transactions and had agreed to hold the property in accordance therewith. Default being made in the payment of the note for the purchase price, the vendor brought an action therefor and attached the property stored in the warehouse. The pledgee thereupon brought an action of replevin against the sheriff and obtained a judgment for the possession of the property. It was held on appeal that the pledgee was entitled to the goods, that he was a *bona fide* holder and had taken without notice of any claims by the vendor for the purchase price thereof, that the position of the vendor who parted with possession of the goods without taking security therefor was less grounded in equity than that of the pledgee who, in good faith, had advanced money upon the warehouse receipt as security. *Spangler v. Butterfield*, 6 Colo. 356; *First Nat. Bank v. Schmidt et al.*, 6 C. A. 216; *Schmidt & Zeigler v. First Nat. Bank*, 10 C. A. 261.

#### R.

*Bills of lading—Exemptions in—Assent thereto implied by acceptance.*

Where one accepted and acted under the bill of lading, containing exemptions against the liability of the carrier, it was held that these actions constituted an implied assent to the terms and conditions therein expressed. *Lindsey v. Flebbe et al.*, 5 C. A. 218.

*Same—Same—Not valid as against fraud, negligence or misfeasance.*

It is well settled in Colorado that a common carrier cannot divest himself of liability either by special contract or notice where damage or loss results from his fraud, negligence or misfeasance. *Union Pac. Ry. Co v. Rainey et al.*, 19 Colo. 225; *Transportation Co. v. Comforth*, 3 Colo. 280.

## CHAPTER VI.

## CONNECTICUT.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Establishment—Receipts :**

Any person may establish and maintain a public warehouse, and may receive for storage into the same any goods, wares, merchandise, provisions, or other commodity, and shall issue to the person from whom he receives the same warehouse receipts therefor; and he may issue warehouse receipts for any of his own property which is deposited in such warehouse; but no person shall issue any receipt for any such property so received by him on storage, or deposited by him in such warehouse, unless he shall have displayed and shall maintain in a conspicuous manner, on the front of the building where such goods or other commodities are stored, the words "Public Warehouse." General Statutes, 1902, sec. 4919.

**Receipt to issue only for goods received :**

No warehouseman or other person shall issue any receipt, acceptance of an order, or other voucher, for or upon any such property, to himself or to any other person purporting to be the owner thereof, or entitled or claiming the right to receive the same, unless such property shall have been actually received into his warehouse and shall be under his control at the time of issuing such receipt, acceptance, or voucher. *Id.* sec. 4920.

**Receipt as security for loan :**

No warehouseman or other person shall issue any receipt or other voucher upon any such property to any person as security for any money loaned or other indebtedness, unless such property shall, at the time of issuing such receipt or other voucher, be in the custody of such warehouseman or other person, and in his warehouse. *Id.* sec. 4921.

**Duplicates to be marked :**

No warehouseman or other person shall issue any second or duplicate receipt, acceptance, or other voucher, for or upon any such property while any former receipt, acceptance, or voucher, for or upon any such property, or any part thereof, shall be outstanding and uncancelled, without writing or printing in red ink across the face of the same the word "Duplicate." *Id.* sec. 4922.

**Goods received for not to be sold :**

No warehouseman or other person shall sell, or incumber, conceal, ship, transfer, or in any manner remove beyond his immediate control any such property for which a receipt shall have been given by him as aforesaid, without the written order or assent of the person holding such receipt. *Id.* sec. 4923.

**Receipts negotiable :**

Warehouse receipts given for any such property stored or deposited with any warehouseman may be transferred by indorsement thereof, and any person to whom the same may be so transferred shall be deemed to be the owner of the property therein specified, so far as to give validity to any pledge, lien or transfer, made or created by any such person; but no property shall be delivered except on surrender and cancellation of the original receipt, or the indorsement of such delivery thereon in case of partial delivery. All warehouse receipts, however, which shall have the words "not negotiable" plainly written or stamped on the face thereof shall be exempt from the provisions of this section. *Id.* sec. 4924.

**Property may be recovered by process of law :**

So much of sections 4923 and 4924 as forbids the delivery of property except on surrender and cancellation of the original receipt, or the indorsement of such delivery thereon, in case of partial delivery, shall not apply to property replevied or removed by operation of law. *Id.* sec. 4925.

**Civil and criminal liability :**

Every warehouseman or other person who shall willfully violate any provision of this chapter shall be fined not more than

one thousand dollars, or imprisoned not more than three years, or both; and any person aggrieved by the violation of any such provision may maintain an action against any person violating any of said provisions, to recover all damages, immediate or consequential, which he may have sustained by reason of any such violation, whether such person shall have been convicted of such violation or not. *Id.* sec. 4926.

#### **Warehouseman's lien—Sale :**

Every public warehouseman, or other person engaged in the warehouse or storage business or who shall have stored goods for another, who shall have in his possession any such property by virtue of an agreement for the storage thereof with the owner of such property or person having a legal right to store the same, shall have a lien for the agreed storage charges on such property, or, where no charges have been agreed on, for the reasonable storage charges thereon, and, when there shall be due and unpaid six months' storage charges thereon, may sell such property at public auction as hereinafter directed; but such sale shall not conflict with the provisions of the warehouse receipt or other written agreement under which such goods were stored. *Id.* sec. 4927.

#### **Notice of sale :**

A written or printed notice of such auction sale, stating the time and place of sale with a description of the articles to be sold, shall be sent, at least thirty days before such auction sale, by registered letter, addressed to the person who left such property for storage, at his last known place of residence, or, in case the warehouseman or storeroft such property has notice from the person who left such property for storage of a change in the title or right of possession thereof, to the owner or person represented to be entitled to receive the same on payment of the storage charges, at his last known place of residence. *Id.* sec. 4928.

#### **Additional notice :**

The post-office registry receipt for such notice, signed by the person who left such property for storage, or in case of transfer

of title, by the owner or person entitled to receive such property on payment of storage charges, shall be sufficient evidence of the giving of legal notice of such sale, and when such receipt so signed is returned to the sender, such sale may proceed according to such notice. If such receipt so signed be not returned to the sender, additional notice of such sale shall be given by posting such notice on the public signpost nearest the place where such sale is to take place, and by publishing a notice in some newspaper having a circulation in the town where such sale is to take place, once a week for three weeks successively before the time fixed for such sale. Such notice shall state the time and place of sale and contain a description of the articles to be sold and the names of the persons proposing to sell the same and of the person who left the same for storage, and also, if the person proposing to sell the same has notice of a change of title or right of possession of the owner or person represented to be entitled to receive the same on payment of storage charges. *Id.* sec. 4929.

#### **Disposition of proceeds of sale :**

The proceeds of such sale, after deducting the storage charges and all expenses connected with such sale, which expenses shall also be a lien on the proceeds of such sale, shall be paid to the owners of the property if called for or claimed by them at any time within one year from the date of such sale; and if such balance is not claimed or called for by the owner within said period of one year, then such balance shall escheat to the state *Id.* sec. 4930.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Bailee may recover full value for loss occasioned by third person—Bailee represents owner.*

If goods intrusted to a bailee are lost by the wrongful act of a third person, the latter is liable to him for their full value, unless the owner interposes by a suit for his own protection. Any sum recovered by the bailee, above what is necessary to compensate him for the loss of his possession and special property, he must hold in trust for the owner; and the third person cannot complain that he is made to pay greater damages than the bailee has sustained, because the bailee, for all the purposes of such action, represents the owner and occupies his place. *Gillette v. Goodspeed*, 69 Conn. 363; *White v. Webb*, 15 Conn. 302.

*Same—Breaking open packages, larceny.*

If a carrier, or other bailee, opens a package of goods and takes away and disposes of them, or any part of them, to his own use, it is larceny. *State v. Fairclough*, 29 Conn. 47.

*Bailment and sale distinguished.*

The delivery of grain to a mill owner under a contract containing a clause as follows: "And it is further understood that the party of the second part (mill owner) shall be responsible for all grain sold, shall collect all the bills for the same, and shall sell to whom he sees fit." *Held*, the interpretation of this clause of the contract made it one of bailment and not of sale. That these provisions could not be regarded as surplusage and that they were entirely inconsistent with the contention that the grain became the property of the mill owner under the terms of the contract. *Johnson v. Allen*, 70 Conn. 738; *Harris v. Coe*, 71 Conn. 157.

## B.

*Ordinary care—Removal of goods to another place of storage.*

A bailee for hire is bound to exercise reasonable and ordinary care in the protection of goods intrusted to him. The

removal of such goods to another place where the risk of loss is not increased, but without consent of the bailor, held not to be violative of his duty as to ordinary care. *Bradley v. Cunningham*, 61 Conn. 485; *Allen et al. v. Somers*, 73 Conn. 355.

## H.

*Action for storage charges—Absence of express agreement as to temperature.*

The plaintiff, a warehouseman, brought an action against the defendant for the recovery of storage charges for the storage of boxes of poultry which had been kept in its cold storage rooms. The defendant admitted that the amount of compensation claimed was due, but alleged by way of counterclaim that the plaintiff had not used due care in the preservation of the poultry and that as a result it had been spoiled and was of no value to the defendant. It appeared that there were two kinds of cold storage known in the business, one known simply as "cold storage" and the other as a "freezer," and that the temperature of a "freezer" was ordinarily kept much lower than that of the cold storage rooms; that the temperature of the cold storage rooms was not low enough to preserve poultry for any great period of time and that it was known to the defendant that the plaintiff's warehouse was not a "freezer." The trial court held that upon the facts found, the plaintiffs had sustained the burden of showing that they had used ordinary care and diligence in the preservation of the poultry and upon appeal it was held that the court did not err in so holding. *Allen et al. v. Somers*, 73 Conn. 355.

## M.

*Conversion—Delivery by bailee of stolen property—Knowledge.*

In a case where stolen property was deposited with a bailee and was delivered by such bailee to the agent of the bailor, in the absence of knowledge on the part of the bailee that the goods were stolen, an action for conversion against the warehouseman will not lie. *Hill v. Hayes*, 38 Conn. 532.

## N.

*Cold storage—Degree of cold—Express agreement.*

In the absence of an express agreement a warehouseman is

only bound to store goods intrusted to him for cold storage in what is commonly known as a cold storage room or warehouse. Where, in an action against a warehouseman for damages resulting from poultry being kept in too high a temperature, it was shown that the nature of the cold storage rooms was known to the owner of the poultry, and, further, that the fact that the warehouseman did not maintain a "freezer" was also known, it was *held* that he was not liable for the resulting loss. *Allen et al. v. Somers*, 73 Conn. 355.

*Insurance—Duty to notify bailee as to existence of insurance.*

The defendant stored a hearse belonging to the plaintiff in his stable and at the time of the contract there was no special agreement made as to where the hearse was to be kept. Subsequently, without the knowledge of the plaintiff, the defendant removed the hearse from his stable to his barn. There was no claim made that the barn was more exposed to fire or that the chances of loss or damages were increased by the removal. It appeared that the plaintiff, without notifying the defendant, had insured the hearse while stored in the stable. Subsequent to its removal to the barn the hearse was destroyed by fire. The policy of insurance became void as a result of the removal of the hearse. It was *held* that the defendant was only bound for reasonable care and that the removal of the hearse from the stable to the barn was not in controvension of the exercise of such care and that it was the duty of the plaintiff to have notified the defendant of the insurance. *Bradley v. Cunningham*, 61 Conn. 485.

**Q.**

*Warehouse receipts—Negotiability—Bona fide holder—No claim for amount due on purchase price nor for government tax—Absence of notice on receipt—Estoppel.*

The plaintiff became the *bona fide* holder of a warehouse receipt and brought an action against the defendant warehouseman for the recovery of the whiskey represented thereby. It appeared that there was an agreement between the original owner of the whiskey and the defendant pursuant to which the whiskey was to remain in the warehouse until the money which

the defendant had advanced to pay the United States revenue tax thereon should be repaid to him. The receipt stated that the whiskey was deliverable under the following conditions: "After the payment of the United States Internal Revenue tax and all other amounts due," followed by "tax paid." It was held that the title to the whiskey passed to the plaintiff upon the delivery to him of the receipt and that the defendant warehouseman, as well as the vendor of the whiskey, were estopped to make any claim for the amount advanced for the payment of the government tax. Further, that the expression "and all other amounts due" could only be *held* to mean proper warehouse charges. *State Bank of New York v. Waterhouse*, 70 Conn. 76.

*Same—Same—Effect of statute as to full negotiability, quære.*

In the above case the court declined to discuss whether or not the statutes of this state gave to warehouse receipts the character of full negotiability, this question not being then presented. *Id.*

R.

*Bill of lading—Statements therein as to value, binding on shipper.*

Where one shipped property by a common carrier and at the time of the shipment stated to the agent of the carrier that its value was one hundred dollars and such value is given in the bill of lading delivered to the shipper; it was *held* that the shipper is estopped to deny that the value of the property was in excess thereof; further, that the regulation of the railroad company requiring a statement as to value is a reasonable one and the shipper of goods was bound thereby. *Coupland v. Housatonic R. R. Co.*, 61 Conn. 531.

*Same—When open to explanation—Statements contained therein conclusive on one issuing same.*

It is well settled that as between a shipper and ship owner the receipt in a bill of lading is open to explanation. But where persons have been misled by statements contained in a false bill of lading, the master or other person issuing the

same will be liable for such misrepresentations. *Relyea v. New Haven Rolling Mill Co.*, 42 Conn. 579.

*Same—Exemption therein.*

Where a bill of lading, issued by a common carrier, states that the carrier will not be liable for loss or injury resulting from certain specified causes therein, and in the case of an injury to a horse carried by it, the contention is made by the carrier that it is exempt from liability under this clause in the bill of lading, an instruction given to the jury, that the carrier was liable, if it should find that the loss occurred through lack of the exercise of ordinary care on the part of the carrier, was correct. A carrier cannot stipulate against his own negligence. *Crosby v. Fitch*, 12 Conn. 410; *Welch v. Boston & Albany R. R. Co.*, 41 Conn. 333; *Camp v. Hartford & N. Y. Steamboat Co.*, 43 Conn. 333; *Candee v. N. Y., N. H. & H. R. R. Co.*, 73 Conn. 667. But see *Coupland v. Housatonic R. R. Co.*, 61 Conn. 532.

*Same—Same—Liability may be reduced by stipulation.*

It is competent for a carrier to stipulate for a consideration for a diminished degree of responsibility from that imposed by law, but such stipulation cannot be carried to the extent of granting the carrier immunity from the result of its negligence or want of ordinary care. *Id.*

## CHAPTER VII.

## DELAWARE.

## LAWS PERTAINING TO WAREHOUSEMEN.

**An Act to make negotiable certain warehouse receipts :**

Warehouse receipts given for any goods, wares, merchandise, grain, flour, produce, petroleum, or other commodities stored or deposited with any warehouseman, wharfinger or other person in this state, or bills of lading or receipts for the same when in transit by cars or vessels to any such warehouseman, wharfinger or other person, shall be negotiable and may be transferred by indorsement and delivery of said receipt or bill of lading; and any person to whom the said bill of lading or receipt may be transferred shall be deemed and taken to be owner of the goods, wares, merchandise therein specified, so as to give security and validity to any lien created on the same, subject to the payment of freight and charges therein; and no property on which such lien may have been created shall be delivered by said warehouseman, wharfinger or other person, except on the surrender and the cancellation of said original receipt or bill of lading, or in case of partial sale or release of the said merchandise by the written consent of the holder of said receipt or bill of lading indorsed therein; *provided*, that all warehouse receipts or bills of lading which shall have the words "not negotiable" plainly written or stamped on the face thereof shall be exempt from the provisions of this act. Laws of Delaware, vol. 19, ch. 177, sec. 1.

No warehouseman, wharfinger or other person shall issue any receipt or voucher for any goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity to any person or persons purporting to be the owner or owners thereof, unless such goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity shall have been actually re-

ceived into store or upon the premises of such warehouseman, wharfinger or other person and shall be in store or on the premises aforesaid and under his control at the time of issuing such receipt. *Id.* sec. 2.

No warehouseman, wharfinger or other person shall issue any second or duplicate receipt for goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity while any former receipt for any such goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity as aforesaid, or any part thereof, shall be outstanding and uncancelled without writing across the face of the same "duplicate." *Id.* sec. 3.

No warehouseman, wharfinger or other person shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control any goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity for which a receipt shall have been given by him as aforesaid, whether received for storage, shipping, grinding, manufacturing or other purposes, without the return of such receipt. *Id.* sec. 4.

Any warehouseman, wharfinger, or other person who shall violate any of the foregoing provisions of this act shall be deemed guilty of fraud, and upon indictment and conviction shall be fined in any sum not exceeding one thousand dollars or imprisoned not exceeding five years, or both, in the discretion of the court; and all and every person or persons aggrieved by the violation of any of the provisions of this act may have and maintain an action at law against the person or persons violating any of the foregoing provisions of this act to receive [recover] all damages which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted of fraud as aforesaid under this act or not. *Id.* sec. 5.

## DECISIONS AFFECTING WAREHOUSEMEN.

**A.**

*Bailment—With and without an interest.*

In a bailment to keep property without an interest the bailee is liable only for gross negligence, but with an interest he is bound to exercise reasonable diligence, and he is liable for slight negligence on a special undertaking. *Chase v. Maberry*, 3 Harr. 266; *Culbreth v. P. W. & B. R. R. Co.*, 3 Houst. 392.

**B.**

*Ordinary care.*

Warehousemen are obliged to exercise only ordinary care. *McHenry v. P. W. & B. R. R. Co.*, 4 Harr. 448; *Chase v. Maberry*, 3 Harr. 266; *Culbreth v. P. W. & B. R. R. Co.*, 3 Houst. 392.

*Same—Reasonable diligence defined.*

Reasonable diligence is that which a prudent man would use in respect to his own property. *Id.*

**H.**

*Lien—Lost if possession be surrendered.*

If the bailee surrenders possession of the pledge to the bailor, his lien is gone. *Scott v. Heather*, 1 Harr. 330.

**L.**

*Replevin—No demand necessary.*

Under the statutory law in the state of Delaware no previous notice is necessary before replevin brought, although defendant may have come into possession of the goods lawfully. *Stockwell v. Robinson*, 9 Houst. 313.

**R.**

*Bill of lading—Indorsement—Bona fide holder—Fraud.*

The indorsement and delivery of a bill of lading is equivalent to the delivery of the goods. Fraud on the part of the indorser cannot affect the title of the indorsee in good faith. The voluntary delivery of a bill of lading consigning goods "to order or assigns" confers all the external *indicia* of the right of disposal. *Mears v. Waples*, 3 Houst. 581; *Same v. Same*, 4 Houst. 62.

## CHAPTER VIII.

## DISTRICT OF COLUMBIA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Lien of warehousemen :**

Every person, firm, association, or corporation lawfully engaged in the business of storing goods, wares, merchandise, or personal property of any description shall have a lien first, except for taxes thereon, for the agreed charges for storing the same, and for all moneys advanced for freight, cartage, labor, insurance, and other necessary expenses thereon. Said lien for such unpaid charges, upon at least one year's storage and for the aforesaid advances in connection therewith, may be enforced by sale at public auction, after thirty days' notice in writing mailed to the last known address of the person or persons in whose name or names the said property so in default was stored, and said notice shall also be published for six days in a daily newspaper in the District of Columbia. And after deducting all storage charges, advances, and expenses of sale, any balance arising therefrom shall be paid by the bailee to the bailor of such goods, wares, merchandise, or personal property, his assigns or legal representatives. D. C. Code, 1902, sec. 1619.

**Assignee :**

Said property may be so sold either in bulk or in separate pieces, articles, packages, or parcels, as will in the judgment of the lien holder secure the largest obtainable price: *Provided*, That if the person or persons storing said property shall have assigned or transferred the title thereto and have duly recorded said assignment or transfer upon the books of the storage warehouse, the written notice of sale shall also be mailed to said transferee or assignee. *Id.* sec. 1620.

**Where title in issue :**

Whenever the title or right of possession to any goods, wares, merchandise, or personal property on storage shall be put in issue by any judicial proceeding, the same shall be delivered upon the order of the court, after prepayment of the storage charges and cash advances then due, by the person at whose instance such change of possession is so ordered, and who shall be entitled to recover such payment as part of the cost in such proceeding, or, if defeated therein, he shall be credited with such payment in taxation of costs against him. And unless the person, firm, association, or corporation so conducting a storage business shall claim some right, title, or interest in said stored property other than the lien hereinabove authorized, he, it, or they shall not be made a party to such judicial proceedings. *Id.* sec. 1621.

**Warehousemen—Embezzlement :**

Any warehouseman, factor, storage, forwarding, or commission merchant, or his clerk, agent, or employee, who with intent to defraud the owner thereof sells, disposes of, or applies to his own use any property intrusted or consigned to him, or the proceeds or profits of any sale of such property, shall be deemed guilty of embezzlement, and shall suffer imprisonment for not more than ten years. *Id.* sec. 838.

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NOTE. In New York a statute similar to section 1621 *held* unconstitutional. See page 552.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Identical goods.*

Where one receives certain bonds, and contracts for "the safe return of said bonds," his obligation is to return the identical bonds and not an equivalent amount in similar bonds. *Moses v. Taylor*, 6 Mack. 255.

*Same—Bailee cannot confer title.*

A mere bailee for hire, though in possession, cannot give title to a third person. *Bridget v. Cornish*, 1 Mack. 29.

*Same—When convertible into a sale—Assumpsit.*

Goods delivered with the understanding that the bailee may, at his option, appropriate them to his own use and pay their value, is a bailment convertible into a sale at the option of the bailee; and when they are so converted the original bailor may sue in *assumpsit* for goods sold and delivered. *Moses v. Taylor*, 6 Mack. 255.

*Same—Statute of limitations.*

It is only from the time that the bailee sets up an adverse claim to the property that the statute is put in operation and begins to run. *Marr v. Kübel*, 4 Mack, 577; *Moses v. Taylor*, 6 Mack. 255.

## B.

*Conversion—Not embezzlement.*

A bailee who converts property of his bailor to his own use is not thereby guilty of embezzlement in this jurisdiction, but is guilty of a breach of trust. *Viedt v. Evening Star Newspaper Co.*, 19 D. C. 534. (But see sec. 838, D. C. Code, *supra*.)

*Storage charges—When tender not necessary—Replevin.*

Where a demand is made upon a warehouseman for the delivery of goods stored with him a tender of the storage charges is not necessary before replevin brought, where refusal to de-

liver is based upon another and a different ground. *Wall v. Mitkiewicz*, 9 App. D. C. 109.

*Same—When charges not paid, writ will be quashed.*

Where goods were replevied upon which storage charges were due the writ will be quashed upon this showing, in the absence of fraud, or neglect on the part of warehouseman. *In re American Security & Trust Co.*, 25 W. L. R. 733.

### C.

*Safe deposit—Joint lessees—Receipt.*

A receipt, from a trust company, which states that a safe deposit box is to be opened only in the presence of both of the two lessees thereof, attempts to impose an extraordinary and unusual liability upon the company which is *possibly* beyond the rights of the lessees to impose. *Carusi v. Savary*, 9 App. D. C. 330.

### H.

*Lien for storage charges, paramount—Replevin.*

Where goods were advertised to be sold for storage charges and the bailor procured writ of replevin which was served on auctioneer during sale, on a motion to quash this writ it was held that the act of Congress of May, 1896, relating to warehousemen was mandatory giving warehousemen a lien for their charges. The marshal was thereupon instructed to return the goods to the warehouseman. *In re American Security & Trust Co.*, Ed. note, 25 W. L. R. 733.

### L.

*Trover—Statute of limitations.*

In trover the conversion is shown by proof of demand and refusal, and limitations only run from the date of such demand and refusal. *Moses v. Taylor*, 6 Mack. 255.

*Detinue—Gist of the action—Pleading.*

In detinue the gist of the action is the wrongful detainer and not the original taking. It lies against the person who has the actual possession of the chattel or who acquired it by any lawful means, such as bailment, delivery or finding; therefore, al-

though a declaration in detinue alleges a bailment to the defendant, and his engagement to redeliver on request, and the defendant has pleaded that the bailment was the security on a loan, the plaintiff may, without being guilty of a departure, reply that he tendered the debt and that the defendant afterwards wrongfully withheld the goods. *Wiard v. Semken*, 2 App. D. C. 424.

*Same—No previous demand necessary.*

In an action of detinue no proof of a previous demand is necessary, the serving of a summons being a sufficient demand. *Marr v. Kübel*, 4 Mack. 577.

#### M.

*Pledge—Pledge made by pledgee to one in good faith—Replevin.*

The pledgee of goods in turn pledged them with another as security for the payment of a personal obligation without any notice that the goods were held as a pledge. The goods were returned to the original pledgee prior to suit brought. In an action of replevin, brought for the recovery of the goods against the second pledgee, the court instructed the jury that if they believed that the defendant received the goods in good faith, not knowing in what capacity the pledgor held them, and had returned the goods to his pledgor before suit brought, that they should find for the defendant. *Held* on appeal that this instruction was correct. *Carpenter v. Starr*, 1 Mack. 417.

*Same—Detinue—Pleading and practice—Confession and avoidance.*

Plaintiff sued defendant in detinue and, in his declaration, stated that the defendant detained the goods upon a bailment for a redelivery upon request; the defendant pleaded specially that he held the goods as security for a debt. *Held*, that the plaintiff, in his replication, could properly state payment of the debt in confession and avoidance, this not constituting a variance. Further *held*, that in the plea *non detinet* that the defendant could not show that he retained the goods as security for a debt but that the special plea was necessary. *Wiard v. Semken*, 2 App. D. C. 424.

## R.

*Bill of lading—Exemptions in receipt given by expressman—Not valid as against negligence—Rule stated.*

If the receipt given by an expressman contains the expression that he is not liable as a carrier but as a "forwarder only" such expression will be construed by the court as a nullity. The law imposes upon expressmen the liabilities of the common carrier. A provision in such a receipt that the expressman will be only liable for such sum as the shipper states the value of the goods to be, held to be a reasonable and binding regulation. But no stipulation can be made by an expressman or other carrier which will exonerate him from liability for the results of his negligence, such contracts being void as against public policy. *Galt Bros. & Co. v. Adams Express Co.*, Mac. A. & M. 124.

## CHAPTER IX.

## FLORIDA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Sale of goods under specified circumstances :**

Warehousemen and wharfingers shall be authorized to sell at public auction all goods, wares and merchandise or other articles commonly designated as "perishable," such as fruits, vegetables, meats, and so forth, that shall have been received by them, remaining on hand unclaimed for the space of not less than ten days, and all goods, wares and merchandise, or other articles not perishable, that shall have been received by them and remaining on hand unclaimed for the space of not less than ninety days, but such sale shall, in no instance, take place without previous notice having been first given for at least two days after the expiration of said ten days, or more, in the case of perishable goods, wares and merchandise, or other articles, or for at least thirty days after the expiration of ninety days, or more, in the case of goods, wares and merchandise, or other articles that are not perishable, said previous notice to be given in one newspaper published at the place of sale, designating the time and place of sale. If there is no newspaper published at the place of said sale, wherein the legal notice can be given, then public notice can be given by five written notices posted in conspicuous places near the place of sale. The owner or consignee of such goods, wares and merchandise, or other articles, may at any time prior to such sale come forward and claim the same, and after paying all charges be entitled to restitution. Rev. Stat. Fla. 1892, sec. 2339.

**Disposition of surplus :**

After all charges upon said goods and merchandise or other articles are paid (not exceeding the ordinary mercantile charges for such locality) should there remain a surplus, the same shall be placed in the county treasury subject to the claim of the

owner of said goods, wares and merchandise, or other articles. After the lapse of one year from the time of placing said surplus in the county treasury, should no person come forward to claim and receive the same, it shall be applied by the county commissioners of the county for the relief of the poor of such county. *Id. sec. 2340.*

**Burning other buildings in the night time :**

Whoever willfully and maliciously burns in the night time a meeting-house, church, court-house, town-house, college, academy, jail or other building erected for public use, or a banking-house, warehouse, manufactory or mill of another, or a barn, stable, shop or office within the curtilage of a dwelling house, or any other building, by the burning whereof any building mentioned in this section is burnt, in the night time, shall be punished by imprisonment in the state prison not exceeding twenty years. *Id. sec. 2427.*

**Same—Burning in day time :**

Whoever willfully and maliciously burns in the day time any building mentioned in the preceding section shall be punished by imprisonment in the state prison not exceeding ten years. *Id. sec. 2428.*

**Embezzlement by bailee, common carrier and hirer :**

If any factor, commission merchant, warehouse keeper, wharfinger, wagoner, stage driver or other common carrier on land or on water, or any other person with whom any property which may be the subject of larceny is intrusted or deposited by another, shall embezzle or fraudulently convert the same, or any part thereof, or the proceeds, or any part thereof, to his own use, or otherwise dispose of the same, or any part thereof, without the consent of the owner or bailor and to his injury, and without paying to him on demand the full value or market price thereof; or if, after a sale of any of the said property with the consent of the owner or bailor, such person shall fraudulently and without consent aforesaid convert or embezzle the proceeds, or any part thereof, to his own use and fail or refuse to pay the same over to the owner or bailor on demand; and if any person borrows or hires property aforesaid and embezzles

or fraudulently converts it or its proceeds, or any part thereof, to his own use, he shall be punished as if he had been convicted of larceny. *Id.* sec. 2454.

See Laws of Florida, 1897, p. 82, being chapter 4549 [No. 35,] for an act approved May 8, 1897, and entitled as follows:

*An Act to Provide for the Regulation of Railroad Schedules, Freights, Express, Sleeping Car and Passengers' Tariffs, and Building of Freight and Passenger Depots in This State; to Prevent Unjust Discrimination in the Rates Charged for the Transportation of Passengers and Freight, and to Prohibit Railroad Companies, Corporations, Persons and All Common Carriers in This State from Charging Other Than Just and Reasonable Rates, and to Enforce the Same; and to Prescribe a Mode of Procedure and Rules of Evidence in Relation Thereto; and to Provide for the Appointment and Election of Commissioners, and to Prescribe Their Duties and Powers.*

**Bill of lading, etc. :**

Sec. 1. That whenever any goods, wares or merchandise shall be shipped into, or out of, this state, or between points within the limits of this state, and the bill of lading or other evidence of shipment thereof shall be attached to, or transmitted with, any commercial paper, for the price or purchase money of such goods, or any part thereof, the collector or holder of such commercial paper shall not under any circumstances, except by express contract in writing, be held to be the warrantor of the quality or quantity or title of the goods, wares or merchandise represented by the bill of lading, or other evidence of shipment.

Sec. 2. All laws and parts of laws in conflict with this act are repealed.

Sec. 3. This act shall go into effect upon its approval by the Governor.

Approved June 2, 1899, Laws, 1899, No. 99, p. 144, sec. 1.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Lien under common law.*

Under the common law the lien of the bailee does not, as against the bailor, extend to the persons employed under the bailee. *Wright v. Terry*, 23 Fla. 160.

*Same—Gratuitous*

A bailee or factor is bound to follow such instructions as are given to him by his principal, unless the instructions are inconsistent with the special agreement between them; and is liable for any injury resulting from a departure from such instructions; and this liability is incurred, although the services undertaken were gratuitous. *Ferguson v. Porter*, 3 Fla. 27.

*Same—Transfer of title—Bailee's assent—Effect of.*

If the bailee, either expressly or impliedly, signify his assent to the transfer, he makes himself the bailee of the purchaser, and there is thereby such a privity established between the parties as will be sufficient to sustain an action between them. *Mitchell v. McLean*, 7 Fla. 329.

## B.

*Diligencee defined.*

Common or ordinary diligence, in the sense of the law, is such as men of common prudence generally exercise about their own affairs. *West v. Blackshear*, 20 Fla. 457.

## N.

*Negligence—Defined—Must be proved.*

Negligence is the failure to observe for the protection of another's interests such care, precaution and vigilance as the circumstances justly demand and the want of which causes him injury. Negligence cannot be presumed but must be affirmatively shown. *Jacksonville Street Railway Co. v. Chappell*, 21 Fla. 175; *Bucki v. Cone*, 25 Fla. 1.

## CHAPTER X.

**GEORGIA.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Warehouseman :**

A warehouseman is a depositary for hire, and is bound only for ordinary diligence; a failure to deliver the goods on demand makes it incumbent on him to show the exercise of ordinary diligence. Code Ga. 1895, sec. 2112.

**Bonded public warehouses :**

Any person engaged in the business of a warehouseman, or any corporation organized under the laws of this state, and whose charter authorizes them to engage in the business of a warehouseman within this state, may, if they so desire, become a bonded public warehouseman, and authorized to keep and maintain bonded public warehouses for the storage of cotton and other goods, wares and merchandise as hereinafter prescribed, upon their giving bond hereinafter required. Supplement Van. E., 1901, sec. 6577.

**Bond to be given :**

Every person or corporation desiring to become a bonded public warehouseman under the authority granted by the preceding section shall give bond to an amount based on the estimated value said warehouseman will provide storage for. Said bond shall be made payable to the clerk of the superior court of the county wherein such bonded public warehouse is situated, and be conditioned for the faithful performance of his duties and liabilities as a bonded public warehouseman under provisions of this act. The surety or sureties upon said bond shall be some one or more of the guarantee, surety, fidelity insurance, or fidelity and deposit companies, which are described in section first of an Act entitled "An Act to authorize solvent guarantee companies, surety companies, fidelity insurance com-

panies, and fidelity and deposit companies to become surety upon attachment bonds, and upon the bonds of city, county and state officers, and providing remedies against such bonds, and for other purposes," approved December 24, 1896, sec. 6620; all of the provisions of said act being hereby made applicable to the purposes and provisions of this act, so far as the same are pertinent or applicable hereto; and it shall be the duty of said clerk of the superior court to fix the amount of said bond, and to approve the surety or sureties thereon. *Id.* sec. 6578.

#### **Liability of principal and sureties :**

Whenever such bonded public warehouseman fails to perform his duty as such, or violates any of the provisions of this act, any person injured by such failure or violation may bring his action in a court of competent jurisdiction against the principal and sureties upon the bond of said warehouseman. *Id.* sec. 6579.

#### **Insurance of stored property :**

Every such bonded public warehouseman shall cause to be insured for the benefit of whom it may concern, unless requested not to insure by the owner, all property from the time it is stored with him, in his said bonded public warehouse, such insurance to be so taken out as to cover and protect said property from the time it was so stored with him. *Id.* sec. 6580.

#### **Receipts of warehouseman :**

Every such warehouseman shall, except as hereinafter provided, give to each person depositing property with him for storage a receipt therefor, which shall be negotiable in form, and shall describe the property, distinctly stating the brand or distinguishing marks upon it, and if such property is grain the quantity and inspected grade thereof. The receipt shall also state the rate of charges for storing the property, and amount and rate for insurance thereon, and also the amount of the bond given to the clerk of the court, as hereinabove provided; *provided, however,* that every such warehouseman shall, upon request of any person depositing property with him for storage, give to such person his non-negotiable receipt therefor, which receipt shall have the words "non-negotiable" plainly written,

printed or stamped on the face thereof, *and provided*, that no assignment of such non-negotiable receipt shall be effective until recorded on the books of the warehouseman issuing it; *provided further*, that the non-negotiable receipt may be surrendered at any time by the owner thereof, and a negotiable receipt issued in lieu of the same. *Id.* sec. 6581.

#### **Transfer of receipts :**

The title to cotton and other goods, wares and merchandise stored in such bonded public warehouses shall pass to a purchaser or a pledgee thereof by the delivery to him of the said warehouseman's receipt therefor with indorsement thereon to such a purchaser or pledgee signed by the person to whom such receipt was originally given by said warehouseman or by the indorsee of such receipt. *Id.* sec. 6582.

#### **Mixed grain or other property :**

When grain or other property is stored in such bonded public warehouses in such a manner that different lots or parcels are mixed together, so that the identity thereof cannot be accurately preserved, the warehouseman's receipts for any portion of such grain or property shall be deemed a valid title to so much thereof as is designated in said receipt, without regard to any separation or identification. *Id.* sec. 6583.

#### **Books of warehouseman :**

Every such warehouseman shall keep a book in which shall be entered an account of all his transactions relating to warehousing, storing and delivering cotton, goods, wares and merchandise, and to the issuing of receipts therefor, which book shall be open to the inspection of any person actually interested in the property to which such entries relate. *Id.* sec. 6584.

#### **Storage sale for non-payment :**

Every bonded public warehouseman who shall have in his possession any property by virtue of any agreement or warehouse receipt for the same on which a claim for storage of the same is at least one year overdue, may proceed to sell the same at public auction, and out of the proceeds may retain all charges

for storage on such goods, wares, and merchandise, and any advances that may have been made thereon by him or them, with legal interest thereon, and the expenses of advertising and sale thereof. But no sale shall be made until after the giving of printed or written notice of such sale to the person or persons in whose name such goods, wares and merchandise were stored, requiring him or them, naming them, to pay the arrears or amounts due for such storage, and in case of default in so doing, the goods, wares and merchandise may be sold to pay the same at a time and place to be specified in such a notice. *Id.* sec. 6585.

#### **Notice by warehouseman :**

The notice required in the last preceding section shall be served by delivering to the person or persons in whose name such goods, wares and merchandise were stored, or by leaving it at his usual place of abode, if within the state, at least thirty days before the time of such sale, and a return of the service shall be made by some officer authorized to serve civil processes, or by some other person, with an affidavit of the truth of the return. If the party storing such property cannot with reasonable diligence be found within the state, then such notice shall be given by publication once in each week for two successive weeks, the last publication to be at least ten days before the time of such sale, in a newspaper published in the city or town where such warehouse is located; or if there is no such paper, in one of the principal papers published in the county in which said city or town is located. In the event that the party storing such goods shall have parted with the same, and the purchaser shall have notified the warehouseman, with his address, such notice shall be given to such person in lieu of the person storing the goods. *Id.* sec. 6586.

#### **Proceeds of sale ; entry, etc. :**

Such bonded public warehouseman shall make an entry in a book kept for the purpose of the balance or surplus of proceeds of sale, if any, and such balance or surplus, if any, shall be paid over to such person or persons entitled thereto, on demand. *Id.* sec. 6587.

**Penalty for unlawful disposition of goods deposited :**

Whoever unlawfully sells, pledges, lends, or in any other way disposes of, or permits, or is party to the unlawful selling, pledging, lending, or other disposition of any goods, wares, merchandise or thing deposited in a bonded public warehouse, without the authority of the party who deposited the same, or of the lawful transferee or indorsee of the receipt given therefor, shall be punished by a fine not to exceed \$2,000, and by imprisonment in the state penitentiary for not more than three years. But no bonded public warehouseman shall be liable to the penalties provided in this section unless with intent to injure or defraud any person to whom he so sells, pledges, lends, or in any other way disposes of same, or is a party to the unlawful selling, pledging, lending, or other unlawful disposition of any goods, wares, merchandise, article or thing so deposited and receipted for by him. *Id.* see. 6588.

**Perishable property, sale of :**

Whenever a bonded public warehouseman has in his possession any property which is of a perishable nature, or will deteriorate in value by keeping, or upon which the charges for storage will be likely to exceed the value thereof, or which by its odor, leakage, inflammability or explosive nature is likely to injure other goods, such property having been stored upon non-negotiable receipt, and when said warehouseman has notified the person in whose name the property was received to remove said property, but such person has refused or omitted to receive and take away such property, and to pay the storage and proper charges thereon, said bonded public warehouseman may, in the exercise of a reasonable discretion, sell the same at public or private sale without advertising, and the proceeds, if there are any proceeds, after deducting the amount of said storage and charges and expenses of sale, shall be paid or credited to the person in whose name the property was stored; and if said person cannot be found, on reasonable inquiry, the sale may be made without any notice, and the proceeds of such sale, after deducting the amount of storage, expenses of sale, and other proper charges, shall be paid to the person entitled to the same. *Id.* see. 6589.

**Unsalable property :**

When a bonded public warehouseman, under the provisions of the preceding section, has made a reasonable effort to sell perishable and worthless property, and has been unable to do so because of its being of little or no value, he may then proceed to dispose of such property in any lawful manner, and he shall not be liable in any way for property so disposed of. *Id.* sec. 6590.

**Storage, liability for :**

When a bonded public warehouseman, under the provisions of the two preceding sections, has sold or otherwise disposed of property, and the proceeds of such sale have not equalled the amount necessary to pay the storage charges, expenses of sale, and other charges against said property, then the person in whose name said property was stored shall be liable to said bonded public warehouseman for any amount, which, added to the proceeds of such sale, will be sufficient to pay all the proper charges upon said property, or in case such property was valueless and there were no proceeds realized from its disposition, the person in whose name said property was stored shall be liable to said public warehouseman for all proper charges against said property. *Id.* sec. 6591.

**Definition :**

A bailment is a delivery of goods or property for the execution of a special object, beneficial either to the bailor or bailee, or both; and upon a contract, express or implied, to carry out this object and dispose of the property in conformity with the purpose of the trust. Code of Ga. 1895, sec. 2894.

**Property in bailee :**

In all cases the bailee, during the bailment, has a right to the possession of the property, and in most cases a special right of property in the thing bailed. For a violation of these rights by any one he is entitled to his action. *Id.* sec. 2895.

**Burden of proof :**

In all cases of bailment after proof of loss, the burden of proof is on the bailee to show proper diligence. *Id.* sec. 2896.

**Care and diligence :**

All bailees are required to exercise care and diligence in protecting and keeping safely the thing bailed. Different degrees of diligence are required according to the nature of the bailments. *Id.* sec. 2897.

**Ordinary :**

Ordinary diligence is that care which every prudent man takes of his own property of a similar nature. The absence of such diligence is termed ordinary neglect. *Id.* sec. 2898.

**Extraordinary :**

Extraordinary diligence is that extreme care and caution which very prudent and thoughtful persons use in securing and preserving their own property. *Id.* sec. 2899.

**Gross neglect :**

Gross neglect is the want of that care which every man of common sense, how inattentive soever he may be, takes of his own property. *Id.* sec. 2900.

**Imputable negligence :**

For the negligence of one person to be properly imputable to another, the one to whom it is imputed must stand in such a relation of privity to the negligent person as to create the relation of principal and agent. In a suit by an infant the fault of the parents, or of the custodians selected by the parents, is not imputable to the child. *Id.* sec. 2901.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Essence of contract.*

The essence of a contract of bailment on the part of a bailee is for diligence of the required degree, and when he has used such diligence his contract is fulfilled and he discharged although the property may be lost during his custody of it. *Merchants Nat. Bank of Savannah v. Guilmartin*, 88 Ga. 797.

*Same—Special deposit in bank—Care in selecting employees.*

A bank is not liable for the loss of a special deposit, for which it receives no compensation, by the theft of its cashier or other servant, provided it has not been guilty of gross negligence in any respect. The negligence of the bank may consist in retaining an unfit person in the position of cashier or other position. But when it does its full duty in selecting the proper person and in not disregarding indications of dishonesty, which ought to arouse suspicion and investigation, it is not responsible to one who had obtained from it the favor of keeping specific property without recompense, although the cashier or other employee steal the property so put in its charge. *Id.* (This case, on the ground of improper instruction to the jury, was sent back for a new trial and the plaintiff again obtained a verdict which on appeal, reported in 93 Ga. 503, was affirmed, the court holding the bank guilty of a want of diligence.)

*Same—Action by bailor or bailee—Measure of damages.*

In an action of trover by a bailee, or special-property man, against the general owner, the measure of his damages is the value of his special property only; but when the action is by the bailee or special-property man, against a stranger or wrong-doer, the plaintiff is entitled to recover the full value of the property converted by the defendant and hold the balance, beyond his own interest, for the general owner. *Schley v. Lyon & Rutherford, Trustees*, 6 Ga. 530.

*Same—Trespass against bailed property—Rights of action.*

In all cases of bailment, where the property is in possession

of the bailee, and a trespass is committed during the continuance of the bailment, this gives the bailee a right of action for the interference with his special property, and a concurrent right to the owner or bailor, for the interference with his general property. Code, secs. 2141, 2191, 3030; *Lockhart v. Western & Atlantic R. R. Co.*, 73 Ga. 472.

*Same—Statute of limitations in case of—Mutual account.*

Where a warehouseman and one of his customers maintained a mutual account which had been running for a period of over six years, it was held that the statute of limitations did not begin to run until the last charge or item of the account. *Flournoy & Epping v. Wooten et al.*, 71 Ga. 168.

*Same—Conversion—When statute of limitations begins to run.*

The statute of limitations begins to run when the bailee for hire holds the goods adversely to the title of the bailor; the possession immediately ceases to be adverse in consequence of the return of the bailee to his duty as such. *Harral v. Wright et al., Exrs.*, 57 Ga. 484; *Blount, Admr., v. Beall*, 95 Ga. 182.

*Evidence—Negligence—Question of law.*

In an action against a bailee, the question of negligence is a question of law for the court to determine, but the facts, from which it is, or is not, inferred, must be found by the jury. *Morel v. Roe*, R. M. Charl. 19.

*Same—When burden of proof on bailee.*

In all cases of bailment, after proof of loss, the burden of proof is on the bailee to show proper diligence. Civil Code, sec. 2696. *Massillion Engine & Thrasher Co. v. Akerman et al.*, 110 Ga. 570; *Concord Variety Works v. Beckham*, 112 Ga. 242.

**B.**

*Warehouseman—Ordinary care—Duty of, defined.*

A warehouseman is only bound to exercise that degree of ordinary diligence in taking care of property stored with him which a prudent man would exercise in taking care of his own property. *Cunningham v. Franklin, Read & Co.*, 48 Ga. 531; *Merchants Nat. Bank of Savannah v. Guilmartin*, 93 Ga. 503.

*Same—Holds for owner.*

Goods in the possession of a warehouseman are legally in the possession of the owner. *Swift, Murphy & Co. v. Mc-Lemore*, 48 Ga. 63; *Zellner v. Mobley*, 84 Ga. 746; *Flournoy, Hatcher & Co. v. Wardlaw*, 67 Ga. 378.

*Same—Prima facie case.*

Where a bailment had been established, a refusal of delivery upon demand likewise shown, and the damage proven, the plaintiff had made his case and, uncontradicted, he was entitled to recover. *Nall v. Farmers Warehouse Co. et al.*, 95 Ga. 770.

*Goods deposited by agent—Where personally liable for storage charges—Election.*

An agent, who had purchased cotton for his principal, stored the same with a warehouseman and did not disclose the fact that he was acting as an agent, in such a case, the warehouseman can hold him personally responsible for all storage charges. If the warehouseman afterwards elects to hold the principal he thereby releases the agent, but the mere fact that the warehouseman having presented his bill for charges to the agent and upon receiving a notification that the agent declined to pay, thereupon requests the attorney for the agent to forward the bill to the principal, this does not constitute such an election as will hold the principal and release the agent. *Garrard, Executor, v. Moody*, 48 Ga. 96.

*Dispute as to title—When right to file interpleader exists.*

A warehouseman sold goods deposited with him, pursuant to what he claims was an order, from his bailor, to sell. The purchaser of the cotton subsequently stores the same with the warehouseman, the original bailor denies having given the warehouseman power to sell, and claims the cotton as his own. *Held*, that the above facts are not such as to allow the warehouseman to file a bill of interpleader, compelling the original bailor and the purchaser to litigate between themselves as to the title of the cotton. The facts do not present a case in which an interpleader will lie, for the reason that, if the warehouseman acted without proper authority in the sale of the cotton, he is

liable in damages to the original bailor. If, under the facts in the given case, a party may be a wrongdoer against either of the claimants of the property, a bill of interpleader cannot be filed. *Tyus & Beall v. Rust, Survivor*, 37 Ga. 574.

*Landlord's debt—Tenant's cotton cannot be taken.*

A landlord, by inadvertence, deposited cotton belonging to his tenant with a warehouseman to whom the landlord was indebted; the warehouseman sought to apply the cotton to his debt. *Held*, that the tenant had a right of action for the cotton against the warehouseman. *Flournoy, Hatcher & Co. v. Wardlaw*, 67 Ga. 378.

*Sale of goods while in warehouse—Best evidence.*

Where goods have been sold while deposited in a warehouse and the purchaser thereof claims that the warehouse receipt was duly assigned to him, in an action, by said purchaser, against the warehouseman for the recovery of the goods, he must produce the receipt or else satisfactorily account for its non-production. The production of the warehouse receipt is the best evidence of title to the goods represented thereby. *Patten v. Baggs*, 43 Ga. 167.

*Conversion—Sale on credit when instructed to sell for cash only, not a conversion.*

Where an agent, who is in possession of goods belonging to his principal for the purpose of sale, sells the same on credit, it will not constitute a conversion although it be shown that under the agreement between them, the agent was authorized to sell for cash only. *Loreless v. Fowler*, 79 Ga. 134.

*Taxable debt—Right to goods stored does not become such until demand and refusal.*

Defendants had undertaken, by contract, to keep safely and deliver to the plaintiff on demand two bales of cotton. Two years elapsed before demand made; *held*, that, under the provisions of the act of October 13, 1870, the plaintiff's right to the possession of this property did not become a taxable debt within the meaning of said act until he had demanded the cotton of

the defendant and had met with a refusal to deliver. *Dawson v. Ivy & Garrard*, 45 Ga. 22.

*Contract of leasee of warehouse acting in capacity of agent and in individual capacity—Individually liable to depositors.*

Where in an action against several persons, doing business as warehousemen, the evidence showed that the plaintiff deposited several bales of cotton with them and, further, that the defendants had contracted in their capacity as a committee, for the purpose of running an alliance warehouse, and also individually. The contract of rental was executed not only in their representative but also in their personal capacity. A bailment was shown, refusal of the defendants to deliver the cotton upon demand and the plaintiff had proved his damages. After such a showing the court granted a nonsuit. It was held that the plaintiff had established a *prima facie* case, that as the evidence was uncontradicted he was entitled to judgment. Therefore, the judgment of the court below was reversed. *Nall v. Farmers' Warehouse Co. et al.*, 95 Ga. 770.

*Delivery—Wrongful where made to the owner's broker in the absence of express authority.*

In an action against a railroad company, liable as a warehouseman, it appeared that it had tendered the goods to the consignee, who had refused to receive them. The carrier's defense was that it had delivered the goods, pursuant to instructions given it by the plaintiff's broker, and that the consignee had directed defendant to consult with such broker. It was shown that it was a custom for carriers to follow the directions of consignees' brokers in case of refusal to receive goods. It was held that the defendant had violated its duty to the consignor in delivering the goods pursuant to instructions received from the plaintiff's broker, that the evidence failed to show any lawful excuse or justification for such delivery, and that ordinary diligence would have required the defendant to go, at least one step further, and obtain satisfactory evidence that the broker in reality had the authority to direct the delivery of the goods in behalf of the plaintiff. *American Sugar Refining Co. v. McGhee*, 96 Ga. 27.

## E.

*Factors—Must act strictly within owners' instructions—Local custom cannot change law.*

The plaintiffs, factors and cotton brokers, brought an action against the defendants on a promissory note and on money due on an account between them. The defendant pleaded payment of the note and recoupment as to the whole amount claimed. On the trial of the case, the defendants proved that they had shipped a large quantity of cotton to the plaintiffs with instructions to sell the same and to apply the proceeds thereof to the payment of the note sued on. And, further, that the sale had been made but not pursuant to the instructions of the defendant, and that the sum actually realized was nearly as great as the amount claimed by the plaintiffs, and that had plaintiffs followed the instructions of the defendants in regard to the sale, the amount realized therefrom would have been in excess of the sum claimed by the plaintiffs. The plaintiffs contended that as they had made advances on the cotton they were not bound to obey the instructions of the defendants in regard to the sale thereof and that this was a custom and usage in the city where the transaction took place. The court *held* that this contention could not be sustained, that it was the duty of the factor to strictly comply with the instructions of his principal and that it was error in the trial court not to instruct the jury, that if they believed that the cotton was shipped to the plaintiffs with the directions as alleged, and that if plaintiffs had sold the said cotton and it would have brought enough to pay off the note, that this was an extinguishment of the debt and the plaintiffs could not recover thereon. *Hatcher & Baldwin v. Corner & Co.*, 73 Ga. 418.

*Same—Sale to recover advances—Effect of death of principal.*

A factor, who has been intrusted with the possession of goods with directions to sell the same at such time as he thought best, has a right to sell a portion thereof in order to reimburse himself for advances made. The bailor's confidence being reposed in the factor, he may, in the absence of instructions, exercise his discretion according to the general usage of the trade; but in return, greater and more skillful diligence is required of him,

and the most active good faith. Where there has been no advances made, the power to sell is revocable at the pleasure of the owner, but not so where the factor has made advances, or incurred expenses in relation to the property, then the power of sale is irrevocable, as to the extent of such advances and expenses, and the factor has a lien on the goods for such sums. Therefore, where advances have been made, the power of sale to such an extent is not revoked by the death of the owner. *Willingham v. Rushing et al.*, 105 Ga. 72.

*Same—Pledge by.*

Where a factor, who was also a warehouseman and commission merchant, issued a receipt for cotton, intrusted to him for sale, to himself and in his own name, and pledged the same with a bank as security for a personal loan to him, it was held that the bank, as pledgee, acquired no title as against a subsequent purchaser of the cotton who bought in good faith from the factor. *National Exchange Bank v. Graniteville Mfg. Co.*, 79 Ga. 22.

H.

*Storage charges.*

A warehouseman is not obliged to deliver goods until his storage charges are paid. *Tyns v. Rust*, 43 Ga. 529; *Dixon v. Central Ry. Co.*, 110 Ga. 173.

*Same—Cannot be changed by notice exhibited in warehouse subsequent to date of storage.*

A warehouseman received cotton for storage when the rate was twenty-five (25) cents for the first month per bale and twelve and one half ( $12\frac{1}{2}$ ) cents for each subsequent month until the cotton was removed; afterward the warehouseman posted a notice in his warehouse, in which it was stated that the charge on all goods stored should be fifty (50) cents for the first month and twenty-five (25) cents for all following months. It was admitted by plaintiff that it was customary among warehousemen that no change in the charge of storage was ever made upon goods already stored; under this admission, it was held that the warehouseman could only recover charges at the

rate prevailing at the time of storage. *Garmany v. Rust*, 35 Ga. 108.

*Warehouseman's lien—Superior to claim for advances and charges.*

Where it appeared that a warehouseman received cotton in his warehouse without notice of any lien or charge against the same, and it subsequently appeared that the cotton was produced on rented ground, the owner of which had an interest in such cotton, and further, that the seller of fertilizer also had a claim against the cotton, it was held that the lien of the warehouseman, for his lawful charges, was superior to any of the aforesaid advances and charges. *Clark & Cole v. Dobbins*, 52 Ga. 656; *Beall v. Butler*, 54 Ga. 43.

*Same—Bailor personally liable for charges.*

Any addition to a lien which a warehouseman has for his lawful charges for storage, the bailor is personally liable therefor. *Garrard, Executor, v. Moody*, 48 Ga. 96.

*Factor's lien—Possession.*

Possession of the property is necessary to create the factor's lien, but that may be actual or constructive. *Kollock v. Jackson*, 5 Ga. 153.

*Same—Judgment paramount.*

Judgments bind all the property owned by the defendant, from their date, as well that subsequently acquired as that owned at the time of signing the judgment; and the lien of judgments has precedence over, and is paramount to the lien of a factor upon property in his possession. *Id.*

*Same—Same—Principal and agent—Set-off—Pleading.*

A principal is liable to his factor for all commissions, expenses, advancements and disbursements, made or accruing in the course of the agency, on his account and for his benefit. And the factor has also a lien upon the goods in his hands, and their proceeds, if lawfully sold for cash, or the securities for which they were sold, if sold for credit, to secure to him such expenses,

disbursements, advancements and commissions. Both the lien and the personal liability of the principal may be waived. The factor may detain the goods in satisfaction of his lien, or he may sue his principal for his commissions, disbursements and expenditures, and when himself sued by his principal, he may set them up in reduction of the plaintiff's demand, without pleading them as a set-off. But the liability of the principal goes upon the ground that they were made and incurred in good faith, reasonably and without any default, on the part of the factor. *Brown, Shipley & Co. v. Clayton*, 12 Ga. 564.

### K.

*Garnishment of goods while in warehouse—Delivery of goods after service of summons—Warehouseman liable.*

The storing of goods with a warehouseman is a contract of bailment, and the receipt is the mere evidence thereof. Where a warehouseman gives a receipt for goods stored by A, in which he promises to deliver the goods to A, or the bearer of the receipt, and is subsequently served with summons of garnishment by a creditor of A, *held*, that he is not relieved from liability, by the delivery of the goods to the holder of the receipt, to whom it was transferred after service of the garnishment. *Smith v. Picket*, 7 Ga. 104.

### L.

*Trover—Actual conversion must be shown—Sale on credit when cash sale only authorized—Demand.*

The defendant was intrusted with certain goods belonging to the plaintiff for the purpose of cash sale. In an agreed statement of the facts in the case it was stated that the defendant sold part of the goods on credit. There was no evidence to show what part of the goods were sold, nor that there had been a demand made prior to action brought. *Held*, on the above stated facts, that there had been no conversion shown; that where one is intrusted with goods belonging to another for the purpose of selling the same for cash that a sale on credit will not constitute a conversion but is simply a breach of instructions. Title would pass to the purchaser in such a case and a sale which passes title is not a conversion, although it may be an abuse of

authority. Trover will not lie in such case but the proper remedy of the plaintiff should have been an action on the case for violation of instructions or breach of contract. *Loveless v. Fowler*, 79 Ga. 134.

*Same—Pledgee of warehouse receipt may maintain trover.*

Where one holds a warehouse receipt as pledgee and the warehouseman refuses to deliver the goods on demand, such pledgee may maintain the action of trover against the warehouseman for he stands in the same privileged position as a *bona fide* purchaser for value of the receipt. *Citizens Banking Co. v. Peacock & Carr*, 103 Ga. 171.

M.

*Pledge—Delivery by warehouse receipt.*

The delivery of a warehouse receipt, being the symbolical delivery of the property represented thereby, is sufficient to create a valid pledge of the property. *Citizens Banking Co. v. Peacock & Carr*, 103 Ga. 171.

*Warehouseman's books—Best evidence as to weight of stored cotton.*

Where cotton is weighed by warehousemen, and an account of the weight is rendered the depositor, their books and not his are the best evidence as to its weight. *Cloud & Shackelford v. Hartridge & Hartridge, Admrs.*, 28 Ga. 272.

N.

*Loss by fire—Warehouseman not responsible.*

A warehouseman is not responsible for goods destroyed by fire unless negligence be shown upon his part. *Brunswick Grocery Co. v. Brunswick & Western R. R. Co.*, 6 Ga. 270.

*Act of war—Not trespass.*

Where an officer in the Confederate Army received property and removed it to prevent it from falling in the hands of the Union forces, it was held that this was not trespass, that cotton was contraband of war; and further, that a clerk of the warehouseman who received such property, after its removal and

placed the same in his employer's warehouse, was not liable for the conversion thereof. *Stafford v. Mercer*, 42 Ga. 556.

*Same—Charges to jury—Ordinary care—Measure of damages.*

Where cotton was thrown out of defendant's warehouse by the Confederate forces, in order that such warehouse might be used as a hospital, and where the evidence showed that both the plaintiff, who was the owner of the cotton, and defendant had seen the cotton so thrown out, it was error on the part of the court to rest its charges to the jury simply on the fact that it was the duty of the warehouseman to recover possession thereof, if he could do so by the exercise of ordinary care and prudence; the court should have further charged that if it appeared to the satisfaction of the jury that plaintiff might have protected his cotton by the exercise of such care, it was his duty to do so, and the attention of the jury should have been called to the fact that, owing to the state of war then existing, both parties were to all intents and purposes under duress. *Smith & Oneal v. Frost*, 51 Ga. 336.

*Loss of weight—Burden of proof.*

Where it is shown that properties stored with a warehouseman have decreased in weight since the same were received by him, the plaintiff must not only show this fact but it must further show that such loss resulted from the negligence and want of proper care on the part of the warehouseman. *Cunningham v. Franklin, Read & Co.*, 48 Ga. 531.

**O.**

*Measure of damages—Interest allowed from date of demand.*

Where a warehouseman was sued for the conversion of cotton deposited with him and it was alleged that he failed to re-deliver the same upon demand, the court charged the jury among other things, that if it found for the plaintiff, its verdict should be for the value of the cotton with interest from the time of demand and that the principle and interest together would be the amount of damages. *Held*, that this was proper charge. *Garrard v. Dawson*, 49 Ga. 434.

## P.

*Cost of removing debris—Equitable lien—Bailor's right of removal.*

A warehouseman had a large quantity of rice stored which was insured in various fire insurance companies by the several owners thereof. The warehouse was burned and a large quantity of the rice ruined. Representatives of the insurance companies, without permission from the warehouseman, removed all the salable rice remaining after the fire and disposed of the same in accordance with the terms of the policies. A large quantity of ruined rice remained on the premises and the warehouseman was obliged to remove the same pursuant to an order of the health authorities of the city. In an action by the warehouseman against the agent of the several insurance companies who held the proceeds of the sale, the former contended that he had an equitable lien on such proceeds for the expense which he had been put to in removing the rice from his premises. The court *held* that this contention could not be sustained, that a warehouseman's lien extended only to the goods of his customer for storage charges that had accrued upon them, and that the court would not extend an equitable lien for his disbursements in such a case. The court *further held* that a depositor had, at all times, the right to go upon the premises of the warehouseman to remove his property therefrom, and that if the property was partially injured that the owner would have a right to remove the uninjured portion, but that he could not be compelled to remove that which was ruined. That if the warehouseman was put to expense in removing such useless property, the expense must be borne by him as it is one of the incidents of the business of warehousemen. *Savannah Steam Rice Mill Co. v. Hull*, 103 Ga. 831.

*Insurance—Contract to keep insured in customer's name.*

The plaintiff brought an action against the defendant warehouseman, alleging that he had stored a large quantity of cotton in the warehouse of the latter, and that under a contract between them it was agreed that the defendant was to keep the cotton insured in the name of the plaintiff. The cotton was to be designated in the policy of insurance by certain marks made

on the several bales. After several months the plaintiff removed the cotton from the warehouse of the defendant and settled his account with him on the basis that the insurance had been placed in the manner specified in the contract. It subsequently came to the knowledge of the plaintiff that the warehouseman had not insured the cotton in the manner set forth in the contract, but that the cotton had been insured under the defendant's general policies of insurance covering all the cotton in the warehouse of the defendant. The depositor thereupon brought this action to recover the amount of insurance with which he was charged. It was *held* that he was entitled to so recover, the jury having found that as a matter of fact the defendant had failed to comply with his contract with the plaintiff. *Henderson Warehouse Co. v. Brand*, 105 Ga. 217.

*Same—Contract to insure—Statement in warehouse receipt as to insurance does not constitute such contract.*

The defendant warehouse company issued to the plaintiff a receipt for cotton stored in which it was stated, "All cotton stored with us fully insured." The defendants were charged, first, with the loss of the cotton in that the fire which destroyed the same was the result of their negligence and, by an amendment to the declaration, with a liability under the contract by which they agreed to keep the cotton insured; and that the statement in the warehouse receipt was evidence of such contract. On motion of the defendant at the trial, that part of the declaration in regard to the contract to keep the cotton insured was stricken out and the jury was left to consider the question as to whether or not the defendant had been guilty of negligence in the loss of the cotton. It was *held* that the mere statement that "All cotton stored with us fully insured" is not sufficient to constitute a contract to insure, and that although these words might be misleading and productive of damage, they were not sufficient to constitute such a contract. The jury found that the defendant had exercised due care and that it was not responsible for the loss of the cotton resulting from the fire. The judgment given for the defendant was, therefore, affirmed on appeal. *Zorn v. Hannah & Co.*, 106 Ga. 61.

*Same—Evidence of custom.*

Evidence that it was the custom of those depositing goods in warehouses to insure them was properly received. *Hamilton & Co. v. Moore*, 94 Ga. 707.

**Q.***Warehouse receipts—Negotiability.*

The transfer and delivery of a warehouse receipt is equivalent to the delivery of the property itself. *Citizens Banking Co. v. Peacock & Carr*, 103 Ga. 171; *Gibson v. Stern*, 8 How. (U. S.) 383.

*Same—Case where bailor protected when warehouse receipt fraudulently negotiated.*

Where the owner of goods delivers them to his agent to deposit the same in a warehouse and the agent accordingly does so, but takes a receipt therefor in his own name and negotiates the same, it was *held* that the title of the owner to the goods was not impaired by the fraudulent negotiation of the receipt. *Richardson & Martin v. Smith*, 33 Ga. Supp. 95.

*Same—Delivery by—Essentials of sale.*

The plaintiff contracted with a manufacturer, who was also conducting a warehouse, that the latter should manufacture certain articles of commerce and, when completed, that the goods should be stored in the warehouse belonging to the manufacturer. It was the custom between them that when the goods were stored the purchaser would honor a draft drawn by the manufacturer, to which draft were attached warehouse receipts showing that the goods had been deposited and stored in the warehouse. On the occasion out of which this suit grew, the manufacturer had issued the usual receipt and drawn his draft on the plaintiff, but the goods represented thereby were still in the factory and had not been delivered to the warehouse. After the plaintiff had paid the draft and before he had withdrawn the goods, a receiver was appointed for the manufacturer who took possession of the goods represented by this receipt, which goods were found in the factory and not in the warehouse. At the trial the court adjudged that no title had passed by the

transfer of this receipt to the plaintiff and that, therefore, he was not entitled to recover. The case was reversed on appeal holding that the essentials of a valid sale had been complied with and the title had been passed to the plaintiff. That the issuing and transferring of a warehouse receipt was a well recognized and common mode of effecting delivery, and, in this case, was undoubtedly intended to operate as such. Having received the price of the goods, the manufacturer would be estopped from denying the fact of delivery to his warehouse. *Shepard & Co. v. King*, 96 Ga. 81.

*Same—Indorsement by one since deceased—Title—Evidence.*

A person, since deceased, had indorsed a warehouse receipt to another, the purpose of such indorsement was not stated. In an action, by the executor, for the recovery of the goods represented by the receipt, parol evidence will be received, which will explain that such indorsement was not for the purpose of passing the title to the goods but simply to enable the assignee to act as the agent for the indorser to obtain the cotton represented by the receipt. *Lowery v. Davidson*, 44 Ga. 38.

*Same—Collateral security—Without indorsement—Intention of parties—Burden of proof.*

Where a receipt, issued by a warehouseman, was transferred by the person to whom the same was issued and pledged as collateral security, for the payment of a loan, but not indorsed to the pledgee, it was *held* that the property passed to the pledgee by such symbolical delivery. Under the code in force in the state of Georgia, a pledgee of such a receipt is such a *bona fide* holder of the property as will be protected under the same circumstances as a purchaser. *Further*, that if the parties so intend, the delivery of a warehouse receipt without indorsement, as collateral security, transfers both title and possession to the property represented by the receipt. Where the warehouseman claims that the pledgee has received the proceeds of the warehouse receipt, the burden of proof is on him to show that fact in the trial of the action for the recovery of the property. *Citizens Banking Co. v. Peacock & Carr*, 103 Ga. 171.

*Same—Property not actually in store—Authority of superintendent to issue—Bona fide holder.*

The superintendent of the defendant warehouse company issued negotiable warehouse receipts, of a special form, when the property represented thereby was not actually in store. It was held that in the absence of statutory provisions, warehouse receipts and bills of lading are mere symbols of the property which they represent, and that a pledgee for value or other bona fide holder occupies no better position than the original bailor. Further, that if warehouse receipts of a special form and character "be adopted and issued in due course of business, for the express purpose of being pledged as security to obtain money, and if, as a part of the regular system of using them, the warehouseman acknowledged in writing on each receipt notice of assignment by the pledgor to the pledgee before the latter advances his money thereon, the pledgee, after advancing his money in good faith, is entitled to stand in the terms of the pledged receipt as importing a genuine business transaction of the nature described in the instrument. Thus, though in fact no goods had been received for storage, the recital in the special receipt being utterly false, nevertheless the recital will have the same effect in protecting such bona fide pledgee as if the goods had been received and stored." And, therefore, the warehouseman was liable for their value. The court holding that he who creates a symbol, is bound by it only in its symbolical character; but he who creates a symbol and aids in raising it to a security, is bound by it both as a symbol and security. *Planters Rice Mill Co. v. Merchants Nat. Bank of Savannah*, 78 Ga. 574; *Planters Rice Mill Co. v. Olmstead & Co.*, 78 Ga. 586.

*Same—Same—Pledged by warehouseman as factor to secure personal loan—Bona fide purchaser of goods protected.*

Where one, who was a warehouseman and who also acted in the capacity of factor and cotton broker, issued a warehouse receipt in his own name for cotton stored with him as factor, and pledged the same with a bank as security for a personal loan to him ; it was held that no title passed to the bank as

against an innocent purchaser of the cotton itself. *National Exchange Bank v. Graniterille Mfg. Co.*, 79 Ga. 22; *Western & A. R. R. Co. v. Ohio Valley B. & T. Co.*, 107 Ga. 512.

*Same—Same—To secure note at usurious rate—Title of such pledgee good as against warehouseman.*

The owner of certain bales of cotton delivered them to the defendant warehouseman and received his warehouse receipt. Such receipt was assigned to the plaintiff, in order to secure the payment of a note which bore interest at a usurious rate. In an action of trover against the warehouseman, these facts were shown at the trial and, further, that there had been a demand made by the plaintiff and a refusal to deliver by the defendant warehouseman. On motion of the defendant the plaintiff was nonsuited. It was held on appeal that the defendant warehouseman, who was a stranger to the usurious transaction, could not set up usury as a defense in the action for the recovery of the property. *Zellner v. Mobley*, 84 Ga. 746.

*Same—Refusal to deliver goods unless receipt surrendered—Not conversion.*

In an action, brought by the assignee of a warehouse receipt, against the warehouseman for conversion of the goods, conversion cannot be shown by the mere fact that the warehouseman refused to deliver the goods when demanded of him, he claiming that the warehouse receipt should be delivered to him before he surrenders the goods or that he be given a bond indemnifying him against misdelivery. *Patten v. Baggs*, 43 Ga. 167.

*Same—Lost receipt—Warehouseman compelled to deliver goods—Equity jurisdiction.*

A bill in equity was filed against warehousemen to compel them to deliver certain goods stored with them upon filing a bond to indemnify the warehousemen, it being alleged in the bill that the warehouse receipt had been lost or destroyed; upon demurrer to such bill it was held that court had jurisdiction to compel defendants to deliver the goods and that the demurrer was properly overruled, the more especially since it appeared that, if the bill had been dismissed for want of jurisdiction, the

complainant's remedy, at the common-law court, might have been barred by the statutes of limitations. *Hardeman & Sparks v. Battersby*, 53 Ga. 36.

*Same—Evidence—Parol testimony—Admission.*

While it is true that usually the possession of property is the best evidence of title, it is also true that, where personal property sold is represented by warehouse receipts, the receipt itself is the best evidence of title. Further, that where a warehouseman declined to surrender property, which he had stored, to one who represented himself as the owner thereof, stating to such third person that he did not doubt that he was the true owner but that he must have his receipt, such action cannot be construed as an admission that the warehouseman regarded such third person as his bailor. It was at the most that the third person seemed to be the owner but that his title was defective. *Patten v. Baggs*, 43 Ga. 167.

**R.**

*Bill of lading—Delivery by carrier of the goods represented without return of the bill of lading.*

A common carrier, which had issued a bill of lading for a quantity of flour intrusted to it for shipment, subsequently delivered the flour without procuring the return of the bill of lading. It appeared that the consignor had consigned the goods subject to his own order, and that he had drawn a draft on a third person and had delivered the bill of lading as security for the payment of this draft. *Held*, that the carrier was liable on the bill of lading. *Boatmen's Saving Bank v. Western & Atlantic R. R. Co.*, 81 Ga. 221; *Western & A. R. R. Co. v. Ohio Valley B. & T. Co.*, 107 Ga. 512; *Coker & Co. v. First Nat. Bank of Memphis*, 112 Ga. 71.

*Same—Same—Waiver.*

The plaintiff sold a carload of shingles to a purchaser and instructed the railroad company not to deliver the same without production of the bill of lading. After the shipment was made, plaintiffs learned that the defendant railroad company had, contrary to the terms of its agreement, delivered the

shingles to the purchaser without requiring the surrender of the bill of lading. The plaintiff thereupon drew his draft at thirty days, and although such draft was not paid, it was held, in an action against the carrier, that the plaintiff had waived his right as to the surrender of the bill of lading on delivery by the drawing of the draft, this being equivalent to the acceptance of a thirty days' credit; further, that the title to the shingles had passed to the purchaser. *Southern Ry. Co. v. Kinchen, & Co.*, 103 Ga. 186.

*Same—Exemptions in—Contrary to code—Effect of acceptance.*

The defendant carrier had issued a bill of lading which contained provisions that it would not be responsible for the loss or damage to goods incurred when on other and connecting lines of railroad, and that in no case would it be liable for damage unless a written demand be made therefor within ten days after delivery of goods. It was held that both of these attempted exemptions were contrary to section 2068 of the code, that it was an attempt to limit the legal liabilities of the carrier and that this could not be done without effectual proof that the shipper had assented thereto; that the mere acceptance of a bill of lading does not establish the shipper's assent to stipulations of this kind. *Central R. R. Co. v. Hasselkus & Stewart*, 91 Ga. 382.

*Same—Indorsement thereon by agent as to condition of the goods when received not admissible in evidence.*

A bill of lading with indorsement thereon by freight agent of the defendant, to the effect that certain corn was received in good order by the road by which he was employed, is not admissible in evidence unless it be further shown that it was the duty of this agent to investigate the condition in which freight was received and report that fact on bills of lading. *Evans & Ragland v. Atlanta & West Point R. R. Co.*, 56 Ga. 498.

*Same—Indorsement.*

Where a bill of lading for flour had not been indorsed to plaintiff, he cannot maintain an action thereon. *Haas v. Kansas City, F. S. & G. R. R. Co.*, 81 Ga. 792.

*Same—Same—Effect.*

An indorsement on a bill of lading by the consignor, to a third person, in effect makes such third person the consignee. *Chicago Packing & Provision Co. v. The Railroad*, 103 Ga. 140.

*Same—Not a “negotiable instrument.”*

Although a bill of lading be indorsed and transferred it is not such a negotiable instrument as will give the assignee any greater rights than the assignor had. *Id.*

*Same—Same—Stands for the property it represents.*

Under the common law, bills of lading are not, properly speaking, negotiable instruments. The mere possession of a bill of lading, in an apparently regular state and under circumstances apparently honest, does not always enable the holder to negotiate them with full protection to a *bona fide* purchaser. If they are stolen or procured from the owner by fraud or trusted to an agent for mere custody and safe-keeping, they occupy much the same, if not exactly the same, position that the property itself would occupy if it were dealt with instead of the bills which represent it. *Tison & Gordon v. Howard*, 57 Ga. 410; *Raleigh & Gaston R. R. Co. et al. v. Lowe*, 101 Ga. 320.

*Bills of lading—Notice necessary to defeat.*

Owing to the importance of bills of lading and similar instruments in commercial transactions of the day, the court *held* that the rights of purchasers thereof would be protected and would not be defeated unless there be notice or clear evidence of such notice; *further*, that mere presumption would not suffice. *Boatmen's Savings Bank v. Western & Atlantic R. R. Co.*, 81 Ga. 221.

*Same—Parol evidence not receivable to show time of delivery—Reasonable time.*

The plaintiffs proved by a bill of lading a written contract on the part of the defendant carrier to carry and deliver certain goods. It did not appear from the bill of lading that any definite time was therein stated in which delivery must be made. It was *held* that there was an implied condition in

such contract that the goods would be delivered within a reasonable time and that parol evidence would not be received to show that it was the understanding of the parties that the goods were to be delivered within a certain understood time; *further*, that the bill of lading must be looked at as the final depository and sole evidence of the contract of the carrier. *Central R. R. Co. v. Hasselkus & Stewart*, 91 Ga. 382; *Richmond & Danville R. R. Co. v. Shomo*, 90 Ga. 496, distinguishing *Purcell v. Southern Ex. Co.*, 34 Ga. 315. See also *McElveen & Hardage v. Southern Ry. Co.*, 109 Ga. 249.

#### T.

*Larceny by employee—Employee not in possession as bailee—Not larceny after a trust.*

Where the employee of a warehouseman stole cotton from him, it was held (the value of the cotton being found to be less than fifty dollars) that the crime committed was one of larceny ; that the property was in the possession of the warehouseman and not of the defendant, and, therefore, that no trust was reposed in the defendant from which such a fraudulent conversion could be shown as would subject him to indictment for larceny after a trust. *Wall v. State of Georgia*, 75 Ga. 474.

## CHAPTER XI.

## IDAHO.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Lien for services :**

Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safe-keeping or carriage thereof, has a special lien thereon, dependent on possession for the compensation, if any, which is due him from the owner for such service (personal property), and livery or boarding or feed stable proprietors, and persons pasturing horses, or stock, have a lien, dependent on possession for their compensation in caring for, boarding, feeding or pasturing such horses or stock. Rev. Stat. Idaho, 1887, sec. 3445.

**Lien of factor :**

A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal. *Id.* sec. 3447.

**When bailee and others are guilty of embezzlement :**

Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement. *Id.* sec. 7069.

## DECISIONS AFFECTING WAREHOUSEMEN.

Q.

*"In good order" construed.*

Where the plaintiff has signed a receipt for goods received from a carrier, or other bailee, in which it is stated that the goods are received in good order, it was *held* that, although this statement would not estop the plaintiff from afterward proving that the goods were in a damaged condition, it nevertheless raised a strong presumption in the defendant's favor. It is a fact about which evidence may be received to fully explain the circumstances under which the statement was made and signed. *Bloomingdale v. Du Rell & Co.*, 1 Ida. 33.

## CHAPTER XII.

## ILLINOIS.

ARTICLE XIII OF THE CONSTITUTION OF ILLINOIS AND LAWS  
PERTAINING TO WAREHOUSEMEN.

## ART. XIII. CONSTITUTION OF ILLINOIS.

Sec. 1. All elevators or storehouses, where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

Sec. 2. The owner, lessee, or manager of each and every public warehouse, situated in any town or city of not less than 100,000 inhabitants, shall make weekly statements under oath, before some officer to be designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such place as shall be designated by law, which statement shall correctly set forth the amount and grade of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued, and are at the time of making such statement, outstanding therefor; and shall, on the copy posted in the warehouse, note daily such changes as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior or superior grades without the consent of the owner or consignee thereof.

Sec. 3. The owners of property stored in any warehouse, or holder of a receipt for the same, shall always be at liberty to examine such property stored, and all the books and records of the warehouse in regard to such property.

Sec. 4. All railroad companies and other common carriers on

railroads shall weigh or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or consignee thereof, at the place of destination.

Sec. 5. All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee, or the elevator, or public warehouse can be reached by any track owned, leased, or used, or which can be used by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank, or coal yard, may be reached by the cars on said railroad.

Sec. 6. It shall be the duty of the general assembly to pass all necessary laws to prevent the issue of false and fraudulent warehouse receipts, and to give full effect to this article of the constitution, which shall be liberally construed so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the general assembly the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common-law remedies.

Sec. 7. The general assembly shall pass laws for the inspection of grain, for the protection of producers, shippers, and receivers of grain and produce.

An Act to regulate public warehouses, and the warehousing and inspection of grain and to give effect to article thirteen of the constitution of this state. Approved April 25, 1871. In force July 1, 1871, L. 1871, 1872, p. 762.

#### **Above act construed—Held to be constitutional:**

This act was *held* to be constitutional on the ground that the legislature had the right in the exercise of the police power to prescribe maximum rates of storage, it not being contended that such rates would be in effect prohibitive of the business; the court further *held* that the act did not violate either the state or federal constitutions. *Munn v. The People*, 69 Ill. 80, aff'd 94 U. S. 113. (See Illinois decisions, page 182).

**Same—No authority for appointment of inspectors for warehouses of Class B:**

In an action of *quo warranto* instituted against the Board of Trade of East St. Louis, the plaintiff charged the defendant with proceeding without warrant of law in the appointment of grain inspectors of warehouses and elevators, known as class B, and in that it charged and collected from the plaintiff and other owners, not being members of said board, inspection fees. It was *held* that although section 19 of the above act provided that no proprietor of a warehouse of Class B shall be permitted to receive any grain or mix the same with the grain of other owners in the storage thereof, until the same shall have been inspected and graded by a regularly appointed inspector, that in view of the fact that the above law did not provide for the appointment of such inspectors that it could not be said that it conferred such power upon the defendant or that it had delegated this power at all. Further, that the contention that the act of 1871 was intended as an amendment to the charter of the board of the defendant could not be sustained, as no such intention is exhibited therein either expressly or impliedly. Further, that as no appointment was provided for in this act and none was made, proprietors of warehouses of Class B could conduct their business without inspectors as they had done prior to the passage of the act. And that this seeming defect in the act did not, in the judgment of the court, invest the defendant with the important power of appointing inspectors of grain.  
*East St. Louis Board of Trade v. The People*, 105 Ill. 382.

**Classified :**

*Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That public warehouses, as defined in article 13 of the constitution of this state, shall be divided into three classes, to be designated as classes A, B, and C, respectively. Revised Statutes of Illinois, 1899, ch. 114, sec. 134.

**Classes defined :**

Public warehouses of Class A shall embrace all warehouses, elevators and granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in

which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved, such warehouses, elevators or granaries being located in cities having not less than 100,000 inhabitants. Public warehouses of Class B shall embrace all other warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together. Public warehouses of Class C shall embrace all other warehouses or places where property of any kind is stored for a consideration. *Id.* ch. 114, sec. 135.

**License:**

The proprietor, lessee or manager of any public warehouse of Class A shall be required, before transacting any business in such warehouse, to procure from the circuit court of the county in which such warehouse is situated, a license, permitting such proprietor, lessee or manager to transact business as public warehouseman under the laws of this state, which license shall be issued by the clerk of said court upon a written application, which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same; or, if the warehouse be owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; and the said license shall give authority to carry on and conduct the business of a public warehouse of Class A in accordance with the laws of this state, and shall be revocable by the said court upon a summary proceeding before the court, upon complaint of any person in writing, setting forth the particular violation of law, and upon satisfactory proof, to be taken in such manner as may be directed by the court. *Id.* ch. 114, sec. 136.

**Above section construed—jurisdiction of circuit court to grant and revoke licenses :**

Under section three of the above act, it was held that the circuit court has exclusive jurisdiction to grant or revoke licenses to warehousemen of Class A. It appeared that prior to the passage of the above act, that the legislature passed on April 13,

1871, an act to establish a railroad and warehouse commission in which it was provided that if it should appear to said commission, after a regular hearing, that a public warehouseman had been guilty of violating any law in the state of Illinois, that such commission might revoke his license and that he should not be entitled to another license until the expiration of six months. When this act was approved there was not, and never had been, any law providing for the issuance of licenses to warehousemen. Therefore the act given above was the first law in the state by which the issuance of licenses to warehousemen was authorized. Under the terms of this act, the circuit court is given authority to issue such licenses to warehousemen of Class A and, after proper hearing, to revoke the same and that its jurisdiction was exclusive in this regard. *Cantrell et al. v. Seaverns*, 168 Ill. 165, aff'g *Same v. Same*, 64 Ill. App. 273.

#### **Bond:**

The person receiving a license as herein provided shall file with the clerk of the court granting the same, a bond to the people of the state of Illinois, with good and sufficient surety, to be approved by said court, in the penal sum of \$10,000, conditioned for the faithful performance of his duty as a public warehouseman of Class A, and his full and unreserved compliance with all laws of this state in relation thereto. *Id.* ch. 114, sec. 137.

#### **Penalty for doing business without license :**

Any person who shall transact the business of a public warehouse of Class A without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been revoked (save only that he may be permitted to deliver property previously stored in such warehouse), shall, on conviction, be fined in a sum not less than \$100 nor more than \$500 for each and every day such business is carried on; and the court may refuse to renew any license, or grant a new one, to any of the persons whose license has been revoked, within one year from the time the same was revoked. *Id.* ch. 114, sec. 138.

**Not to discriminate—When grain may be mixed—Receipts:**

It shall be the duty of every warehouseman of Class A to receive for storage any grain that may be tendered him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between persons, or between himself as the owner of grain stored in such house, and other persons, desiring to avail themselves of warehouse facilities—such grain, in all cases, to be inspected and graded by a duly authorized inspector, and to be stored with grain of a similar grade, received at the same time, as near as may be. In no case shall grain of different grades be mixed together while in store; but, if the owner or consignee so requests and the warehouseman consents thereto, his grain of the same grade may be kept in a bin by itself, apart from that of other owners, which bin shall thereupon be marked and known as a "separate bin." If a warehouse receipt be issued for grain so kept separate, it shall state on its face that it is in a separate bin, and shall state the number of such bin; and no grain shall be delivered from such warehouse unless it be inspected on the delivery thereof by a duly authorized inspector of grain. Nothing in this section shall be so construed as to require the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where such warehouse is necessarily closed.

The proprietors, lessees or managers of public warehouses of Class A may store in any such warehouses, owned, leased or managed by them, grain of their own, and mix it with the grain of others of like grade stored therein, and may purchase warehouse receipts representing grain on store in such warehouses owned, leased or managed by them; but when any such proprietor, lessee or manager shall desire to so store and mix his own grain in any such warehouse or warehouses owned, leased or managed by him, or to purchase receipts for grain on store therein, he shall so inform the chief inspector of grain of the county in which such warehouse or warehouses are located, and said chief inspector shall thereupon place and keep in such warehouse or warehouses, whenever necessary so to do, one or

more assistant inspectors, who shall, in addition to their usual duties as assistant inspectors, have general supervision over the storing and care of the grain stored in such warehouse or warehouses, under such rules and regulations as shall be made by the railroad and warehouse commissioners; and said commissioners are hereby invested with full power and authority to make all rules and regulations concerning the storing, handling and delivery of grain in warehouses of Class A, in which the proprietors, lessees or managers thereof store their own grain, as may, in their opinion, be necessary to prevent any fraud upon, or discrimination against, other depositors of grain in their said warehouse or warehouses from securing to himself, as the owner of grain stored therein, any benefit or advantage over any other depositor of grain stored in such warehouse or warehouses. *Id.* ch. 114, sec. 139.

#### **Manner of issuing receipts:**

Upon application of the owner or consignee of grain stored in a public warehouse of Class A, the same being accompanied with evidence that all transportation or other charges which may be a lien upon such grain, including charges for inspection, have been paid, the warehouseman shall issue to the person entitled thereto, a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store, to be stored with grain of the same grade by inspection, received at about the date of the receipt, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and the payment of proper charges for storage. All warehouse receipts for grain, issued from the same warehouse, shall be consecutively numbered; and no two receipts, bearing the same number, shall be issued from the same warehouse during any one year, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "duplicate." If the grain was received from railroad cars, the number of each car shall be stated upon

the receipt with the amount it contained; if from canal boat or other vessel, the name of such craft; if from teams or by other means, the manner of its receipt shall be stated on its face. *Id.* ch. 114, sec. 140.

### **Cancelling receipts :**

Upon the delivery of grain from store, upon any receipt, such receipt shall be plainly marked across its face with the word "cancelled," with the name of the person cancelling the same, and shall thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. *Id.* ch. 114, sec. 141.

### **Further of issuing and cancelling receipts :**

No warehouse receipt shall be issued, except upon the actual delivery of grain into store, in the warehouse from which it purports to be issued, and which is to be represented by the receipt; nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received; nor shall more than one receipt be issued for the same lot of grain, except in cases where receipts for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder; but such new receipt shall bear the same date as the original, and shall state on its face that it is balance of receipt of the original number; and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consent thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store; and the new receipts shall express on their face that they are parts of other receipts, or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued, as explanatory of the change, but no consolidation of receipts of dates differing more

than ten days shall be permitted, and all new receipts issued for old ones cancelled, as herein provided, shall bear the same dates as those originally issued, as near as may be. *Id.* ch. 114, sec. 142.

#### **Not to limit liability :**

No warehouseman in this state shall insert in any receipt issued by him, any language in anywise limiting or modifying his liabilities or responsibility, as imposed by the laws of this state. *Id.* ch. 114, sec. 143.

#### **Delivery of property :**

On the return of any warehouse receipt issued by him, properly indorsed, and the tender of all proper charges upon the property represented by it, such property shall be immediately deliverable to the holder of such receipt, and it shall not be subject to any further charges for storage, after demand for such delivery shall have been made. Unless the property represented by such receipt shall be delivered within two hours after such demand shall have been made, the warehouseman in default shall be liable to the owner of such receipt for damages for such default, in the sum of one cent per bushel, and in addition thereto, one cent per bushel for each and every day of such neglect or refusal to deliver: *Provided*, no warehouseman shall be held to be in default in delivering if the property is delivered in the order demanded, and as rapidly as due diligence, care and prudence will justify. *Id.* ch. 114, sec. 144.

#### **Posting grain in store—Statement to registrar—Daily publication—Cancelled receipts :**

The warehousemen of every public warehouse of Class A shall, on or before Tuesday morning of each week, cause to be made out, and shall keep posted up in the business office of his warehouse, in a conspicuous place, a statement of the amount of each kind and grade of grain in store in his warehouse at the close of business on the previous Saturday, and shall, also, on each Tuesday morning, render a similar statement, made under oath before some officer authorized by law to administer oaths, by one of the principal owners or operators thereof, or by the

bookkeeper thereof, having personal knowledge of the facts, to the warehouse registrar appointed as hereinafter provided. They shall also be required to furnish daily, to the same registrar, a correct statement of the amount of each kind and grade of grain received in store in such warehouse on the previous day; also the amount of each kind and grade of grain delivered or shipped by such warehouseman during the previous day, and what warehouse receipts have been cancelled, upon which the grain has been delivered on such day, giving the number of each receipt, and amount, kind and grade of grain received and shipped upon each; also, how much grain, if any, was so delivered or shipped, and the kind and grade of it, for which warehouse receipts had not been issued, and when and how such unreceipted grain was received by them; the aggregate of such reported cancellations and delivery of unreceipted grain, corresponding in amount, kind and grade with the amount so reported, delivered or shipped. They shall also, at the same time, report what receipts, if any, have been cancelled and new ones issued in their stead, as herein provided for. And the warehouseman making such statements, shall, in addition, furnish the said registrar any further information, regarding receipt issued or cancelled, that may be necessary to enable him to keep a full and correct record of all receipts issued and cancelled, and of grain received and delivered. *Id.* ch. 114, sec. 145.

#### **Appointment of chief inspector:**

It shall be the duty of the governor to appoint by and with the advice and consent of the senate a suitable person who shall not be a member of the board of trade, and who shall not be interested either directly or indirectly in any warehouse in the state, a chief inspector of grain, who shall hold his office for a term of two years, unless sooner removed, as hereinafter provided for, in every city or county in which is located a warehouse of Class A or Class B: *Provided*, That no such grain inspector for cities or counties in which are located warehouses of Class B shall be appointed, except upon the recommendation of the Board of Railroad and Warehouse Commissioners; and such recommendation shall be made only upon a request for such action by the county commissioners or board of super-

visors of the county in which such warehouses are located, and cities or counties wherein an inspector may be appointed, no person other than such duly appointed inspector, or those authorized as assistant inspectors, shall inspect or grade any grain without being liable to the penalties provided in section 20 of said act. *Id.* ch. 114, sec. 146, p. 1.

#### **Duty of chief inspector:**

It shall be the duty of such chief inspector of grain to have a general supervision of the inspection of grain, as required by this act or laws of this state, under the advice and immediate direction of the Board of Commissioners of Railroads and Warehouses. *Id.* ch. 114, sec. 146, p. 2.

#### **Assistant inspector:**

The said chief inspector shall be authorized to nominate to the Commissioners of Railroads and Warehouses such suitable persons in sufficient number as may be deemed qualified for assistant inspectors, who shall not be members of the board of trade nor interested in any warehouse, and also such other employees as may be necessary to properly conduct the business of his office; and the said commissioners are authorized to make such appointments. *Id.* ch. 114, sec. 146, p. 3.

#### **When inspector to take oath and give bond:**

The chief inspector shall, upon entering upon the duties of his office, be required to take an oath as in cases of other officers, and he shall execute a bond to the people of the state of Illinois, in the penal sum of fifty thousand dollars, when appointed for any city in which is located a warehouse of Class A, and ten thousand dollars when appointed for any other city or county, with sureties to be approved by the Board of Commissioners of Railroads and Warehouses, with condition therein that he will faithfully and strictly discharge the duties of his said office of inspector according to law, and the rules and regulations prescribing his duties; and that he will pay all damages to any person or persons who may be injured by reason of his neglect, refusal or failure to comply with the law and the rules and regulations aforesaid. *Id.* ch. 114, sec. 146, p. 4.

**Assistant inspector—Oath—Bond :**

And each assistant inspector shall take a like oath, execute a bond in the penal sum of five thousand dollars, with like conditions, and to be approved in like manner as is provided in the case of the chief inspector, which said several bonds shall be filed in the office of said commissioners; and suit may be brought upon said bond or bonds in any court having jurisdiction thereot, in the county where the plaintiff or defendant resides, for the use of the person or persons injured. *Id.* ch. 114, sec. 146, p. 5.

**Rules for government of inspectors :**

The chief inspectors of grain, and all assistant inspectors of grain and other employees in connection therewith, shall be governed in their respective duties by such rules and regulations as may be prescribed by the Board of Commissioners of Railroads and Warehouses; and the said board of commissioners shall have full power to make all proper rules and regulations for the inspection of grain, and shall also have power to fix the rate of charges for the inspection of grain and the manner in which the same shall be collected, which charges shall be regulated in such manner as will, in the judgment of the commissioners, produce sufficient revenue to meet the necessary expenses of the service of inspection and no more. *Id.* ch. 114, sec. 146, p. 6.

**Compensation :**

It shall be the duty of the said board of commissioners to fix the amount of compensation to be paid to the chief inspector, assistant inspectors, and all other persons employed in the inspection service, and prescribe the time and manner of their payment. *Id.* ch. 114, sec. 146, p. 7.

**Appointment of warehouse registrar :**

The said Board of Commissioners of Railroads and Warehouses are hereby authorized to appoint a suitable person as warehouse registrar and such assistants as may be deemed necessary to perform the duties imposed upon such registrar by the provisions of this act. *Id.* ch. 114, sec. 146, p. 8.

**Board of commissioners to exercise a general supervision :**

The said board of commissioners shall have and exercise a general supervision and control of such appointees, shall prescribe their respective duties, shall fix the amount of their compensation and time and manner of its payment. *Id.* ch. 114, sec. 146, p. 9.

**Penalty for violating act :**

Upon the complaint in writing of any person to the said board of commissioners, supported by reasonable and satisfactory proof, that any person appointed or employed under the provisions of this section has violated any of the rules prescribed for his government, has been guilty of any improper official act, or has been found insufficient or incompetent for the duties of his position, such person shall be immediately removed from his office or employment by the same authority that appointed him, and his place shall be filled, if necessary, by a new appointment; or, in case it shall be deemed necessary to reduce the number of persons so appointed or employed, their term of service shall cease under the orders of the same authority by which they were appointed or employed. *Id.* ch. 114, sec. 146, p. 10.

**Necessary expenses of inspector of grain :**

All necessary expenses incident to the inspection of grain, and the office of registrar, economically administered, including the rent of suitable offices, shall be deemed the expenses of inspection service and shall be included in the estimate of expenses of such inspection service and shall be paid from the funds collected for the same. (1) An Act to amend section 14 of an act entitled "An act to regulate public warehouses, and the warehousing and inspection of grain, and to give effect to Article XIII of the Constitution of this State," approved April 25, 1871, in force July 1, 1871, and to provide for revenue and the payment of the expenses of the same. *Id.* ch. 114, sec. 146, p. 11.

**Rates of storage :**

Every warehouseman of public warehouses of Class A shall

be required, during the first week in January of each year, to publish in one or more of the newspapers (daily, if there be such) published in the city in which such warehouse is situated, a table of the schedule or rate for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased (except as provided in section 16 of this act) during the year; and such published rates, or any published reduction of them, shall apply to all grain received into such warehouse from any person or source, and no discrimination shall be made directly or indirectly, or for or against any charges made by such warehouseman for the storage of grain. The maximum charge for storage and handling of grain, including the cost of receiving and delivering, shall be, for the first ten days or part thereof, one and one-quarter ( $1\frac{1}{4}$ ) cents per bushel, and for each ten days, or part thereof after the first ten days one-half of one cent per bushel: *Provided, however,* that grain damp, or liable to early damage, as indicated by its inspection when received, may be subject to two cents per bushel storage, for the first ten days, and for each additional five days, or part thereof not exceeding one-half of one cent per bushel: *Provided, further,* that where grain has been received in any such warehouse prior to the first day of March, 1877, under the express or implied contract to pay and receive rates of storage different from those prescribed by law, or where it has been received under any custom or usage prior to said day to pay or receive rates of storage different from the rates fixed by law, it shall be lawful for any owner or manager of such warehouse to receive and collect such agreed or customary rates. *Id.* ch. 114, sec. 147.

#### **Loss by fire—Heating—Order of delivery—Grain out of condition :**

No public warehouseman shall be held responsible for any loss or damage to property by fire, while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same; nor shall he be held liable for damages to grain by heating, if it can be shown that he has exercised proper care in handling and storing the same, and that such heating or damage was the result of causes beyond his control; and, in order that no injustice may result to the holder of the grain in

any public warehouse of Classes A or B, it shall be deemed the duty of such warehouseman to dispose of, by delivery or shipping, in the ordinary or legal manner of so delivering, that grain of any particular grade which was first received by them, or which has been for the longest time in store in his warehouse; and, unless public notice has been given that some portion of the grain in his warehouse is out of condition, or becoming so, such warehouseman shall deliver grain of quality equal to that received by him, on all receipts as presented. In case, however, any warehouseman of Classes A or B shall discover that any portion of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice, by advertisement in a daily newspaper in the city in which such warehouse is situated, and by posting a notice in the most public place (for such purpose) in such city, of its actual condition, as near as he can ascertain it; shall state in such notice the kind and grade of grain, and the bins in which it is stored; and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers, amounts and dates of each—which receipts shall be those of the oldest dates then in circulation or uncanceled, the grain represented by which has not previously been declared or received for as out of condition, or if the grain longest in store has not been received for, he shall so state, and shall give the name of the party for whom the grain was stored, the date it was received, the amount of it; and the enumeration of receipts and identification of grain so discredited shall embrace, as near as may be, as great a quantity of grain as is contained in such bins; and such grain shall be delivered upon the return and cancellation of the receipt, and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act of neglect, the effect of which is to de-

preciate property stored in the warehouse under his control, shall be held responsible as at common law, or upon the bond of such warehouseman, and in addition thereto, the license of such warehouseman, if his warehouse be of class A, shall be revoked. Nothing in this section shall be so construed as to permit any warehouseman to deliver any grain stored in a special bin, or by itself, as provided by this act, to any but the owner of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition, as herein provided for, shall (not) be removed from store by the owner thereof within two months from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice, by advertisement in a newspaper (daily, if there be such) published in the city or town where such warehouse is located. *Id.* ch. 114, sec. 148.

**Tampering with grain stored—Private bins—Drying, cleaning, moving :**

It shall not be lawful for any public warehouseman to mix any grain of different grades together, or to select different qualities of the same grade for the purpose of storing or delivering the same, nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain while in his possession or custody, with a view of securing any profit to himself or any other person; and in no case, even of grain stored in a separate bin, shall he be permitted to mix grain of different grades together while in store. He may, however, on request of the owner of any grain stored in a private bin, be permitted to dry, clean, or otherwise improve the condition or value of any such lot of grain; but in such case it shall only be delivered as such separate lot, or as the grade it was originally when received by him, without reference to the grade it may be as improved by such process of drying or cleaning. Nothing in this section, however, shall prevent any warehouseman from moving grain while within his warehouse for its preservation or safe-keeping. *Id.* ch. 114, sec. 149.

**Examination of grain and scales—Incorrect scales :**

All persons owning property, or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property, shall at all times, during ordinary business hours, be at full liberty to examine any and all property stored in any public warehouse in this state, and all proper facilities shall be extended to such person by the warehouseman, his agents and servants, for an examination; and all parts of public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or of any authorized inspector of such property. And all scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized inspector or sealer of weights and measures, at any time when required by any person or persons, agent or agents, whose property has been or is to be weighed on such scales—the expense of such test by an inspector or sealer to be paid by the warehouse proprietor if the scales are found incorrect, but not otherwise. Any warehouseman who may be guilty of continuing to use scales found to be in an imperfect or incorrect condition by such examination and test, until the same shall have been pronounced correct and properly sealed, shall be liable to be proceeded against as hereinafter provided. *Id. ch. 114, sec. 150.*

**Grain must be inspected :**

In all places where there are legally appointed inspectors of grain, no proprietor or manager of a public warehouse of Class B shall be permitted to receive any grain and mix the same with the grain of other owners, in the storage thereof, until the same shall have been inspected and graded by such inspector. *Id. ch. 114, sec. 151.*

**Above section construed :**

This act does not provide for the appointment of inspectors of Class B, hence above section inoperative until such inspectors are legally appointed. *Board of Trade v. The People, 105 Ill. 382.*

**Assuming to act as inspector :**

Any person who shall assume to act as an inspector of grain,

who has not first been so appointed and sworn, shall be held to be an impostor, and shall be punished by a fine of not less than \$50 nor more than \$100 for each and every attempt to so inspect grain, to be recovered before a justice of the peace.

#### **Misconduct of inspector—Influencing :**

Any duly authorized inspector of grain who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty, or the improper performance of any duty as such inspector of grain; and any person who shall improperly influence any inspector of grain in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than \$100 nor more than \$1,000, in the discretion of the court, or shall be imprisoned in the county jail not less than three nor more than twelve months, or both, in the discretion of the court. *Id.* ch. 114, sec. 152.

#### **Owner, etc., dissatisfied with inspection—His rights :**

In case any owner or consignee of grain shall be dissatisfied with the inspection of any lot of grain, or shall, from any cause, desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into any public warehouse (whether the property may have previously been consigned to such warehouse or not), by giving notice to the person or corporation in whose possession it may be at the time of giving such notice; and such grain shall be withheld from going into store, and be delivered to him, subject only to such proper charges as may be a lien upon it prior to such notice. The grain, if in railroad cars, to be removed therefrom by such owner or consignee within twenty-four hours after such notice has been given to the railroad company having it in possession : *Provided*, such railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow such owner or consignee to so receive his grain shall be deemed guilty of conversion, and shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such grain is not to be

delivered into store may also be given to the proprietor or manager of any warehouse into which it would otherwise have been delivered, and if, after such notice, it be taken into store in such warehouse, the proprietor or manager of such warehouse shall be liable to the owner of such grain for double its market value. *Id.* ch. 114, sec. 153.

#### **Combination :**

It shall be unlawful for any proprietor, lessee or manager of any public warehouse, to enter into any contract, agreement, understanding, or combination, with any railroad company or other corporation, or with any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage or for any other purpose, contrary to the direction of the owner, his agent, or consignee. Any violation of this section shall subject the offender to be proceeded against as provided in section 23 of this act. *Id.* ch. 114, sec. 154.

#### **Suits :**

If any warehouseman of Class A shall be guilty of a violation of any of the provisions of this act, it shall be lawful for any person injured by such violation to bring suit in any court of competent jurisdiction, upon the bond of such warehouseman, in the name of the people of the state of Illinois, to the use of such person. In all criminal prosecutions against a warehouseman, for the violation of any of the provisions of this act, it shall be the duty of the prosecuting attorney of the county in which such prosecution is brought, to prosecute the same to a final issue, in the name of and on behalf of the people of the state of Illinois. *Id.* ch. 114, sec. 155.

#### **Warehouse receipt assignable :**

Warehouse receipts for property stored in any class of public warehouses, as herein described, shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another. All warehouse receipts for property stored in public warehouses of Class C shall

distinctly state on their face the brand or distinguishing marks upon such property. *Id.* ch. 114, sec. 156.

#### **Above section construed :**

There being no penalty for failure to place upon the warehouse receipts the distinguishing marks above provided for, the failure to do so will not render the receipt void in the hands of an assignee for value. *Hoffman v. Schoyer et al.*, 143 Ill. 598.

#### **False receipts—Fraudulent removal :**

Any warehouseman of any public warehouse who shall be guilty of issuing any warehouse receipt for any property not actually in store at time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in its character, either as to its date or the quantity, quality, or inspected grade of such property, or who shall remove any property from store (except to preserve it from fire or other sudden danger), without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall, when convicted thereof, be deemed guilty of a crime and shall suffer, in addition to any other penalties prescribed by this act, imprisonment in the penitentiary for not less than one, and not more than ten years. Restricted as to receipts issued before Oct. 8, 1871. L. 1871, 1872, p. 744. See "Criminal Code," ch. 38, sec. 124, 125. *Id.* ch. 114, sec. 157.

#### **Above section construed :**

*Held*, sections 124 and 125 of the criminal code did not impliedly repeal the above. *Sykes v. The People*, 127 Ill. 117.

#### **Common-law remedy saved :**

Nothing in this act shall deprive any person of any common-law remedy now existing. *Id.* ch. 114, sec. 158.

#### **Printed copy of act posted :**

All proprietors or managers of public warehouses shall keep posted up at all times, in a conspicuous place in their business offices, and in each of their warehouses, a printed copy of this act. *Id.* ch. 114, sec. 159.

**Repeal :**

All acts or parts of acts inconsistent with this act are hereby repealed. *Id.* ch. 114, sec. 160.

**Issuance and cancellation of receipts :**

An act providing for the issuing and the cancellation of receipts for public warehouses or warehouses of Class A or Class B, in the state of Illinois, and providing penalties for violation thereof. (Approved May 11, 1901. In force July 1, 1901. L. 1901, p. 320.)

**Warehouse receipt—When to issue—What to contain—To be stamped and marked “registered for cancellation”—Penalty for delivering grain without notice from the registrar that said receipts have been registered for cancellation—Penalty :**

*Be it enacted by the People of the State of Illinois represented in the General Assembly:* That upon the receipt of any grain for storage in any public warehouse of Class A or Class B (in counties where a chief grain inspector has or shall be lawfully appointed), the said warehouseman shall issue or cause to be issued a receipt for the number of bushels, the kind, the grade of such grain, the owner thereof, and shall report within twenty-four (24) hours to the warehouse registrar the amount of said grain, the owner thereof, the number of the receipt issued therefor, the kind and grade of said grain; and that no grain shall be delivered from store from any such public warehouse of Class A or Class B (in counties where a chief grain inspector has or shall be lawfully appointed), for which, or representing which, any such receipt shall have been issued, except upon the return of said receipt stamped, or otherwise plainly marked by the warehouse registrar with the words “registered for cancellation,” and the date thereof. And it shall be the duty of the warehouseman, after said receipts have been stamped and marked “registered for cancellation,” and within twenty-four (24) hours after the last of the grain has been delivered, to report said receipts to the registrar cancelled; and any warehouseman, agent, clerk or servant failing to issue receipts for grain, when received as aforesaid, shall be subject to a fine of one

hundred (\$100) dollars for each offense. And any warehouseman, agent, clerk or servant so delivering any grain, where receipts have been issued as aforesaid, or inspector or person connected with the grain department, knowingly permitting said grain to be delivered without notice from the registrar that said receipts have been registered for cancellation, shall be deemed guilty of a crime, and upon conviction thereof shall be fined an amount (equal) to the value of the property so delivered, or imprisonment in the penitentiary not less than one year nor more than ten years. *Id.* ch. 114, sec. 160a.

An Act to amend an act entitled "An act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to article thirteen (13) of the constitution of the state," approved April 25, 1871, in force July 1, 1871, and to establish a committee of appeal, and prescribe their duties. (Approved April, 1873. In force July 1, 1873.)

#### **Commissioners to establish grades :**

*Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the board of railroad and warehouse commissioners shall establish a proper number and standard of grades for the inspection of grain, and may alter or change the same from time to time: *Provided*, no modification or change of grades shall be made, or any new ones established, without public notice being given of such contemplated change, for at least twenty days prior thereto, by publication in three daily newspapers printed in each city containing warehouses of Class A: *And, provided, further*, that no mixture of old and new grades, even though designated by the same name or distinction, shall be permitted while in store. *Id.* ch. 114, sec. 161.

#### **Committee of appeals :**

Within twenty days after this act takes effect, the board of railroad and warehouse commissioners shall appoint three discreet and competent persons to act as a committee of appeals, in every city wherein is located a warehouse of Class A, who shall hold their office for one year and until their successors are appointed. And every year thereafter a like committee

of appeals shall be appointed by said commissioners, who shall hold their office for one year and until their successors are appointed: *Provided*, said commissioners shall have power, in their decision, to remove from office any member of said committee at any time, and fill vacancies thus created by the appointment of other discreet persons. *Id.* ch. 114, sec. 162.

#### **Appeals—Notices :**

In all matters involving doubt on the part of the chief inspector, or any assistant inspector, as to the proper inspection of any lot of grain, or in case of any owner, consignee or shipper of grain, or any warehouse manager, shall be dissatisfied with the decision of the chief inspector or any assistant inspector, an appeal may be made to said committee of appeal, and the decision of a majority of said committee shall be final. Said board of commissioners are authorized to make all necessary rules governing the manner of appeals as herein provided. And all complaints in regard to the inspection of grain, and all notices requiring the services of the committee of appeal, may be served on said committee, or may be filed with the warehouse registrar of said city, who shall immediately notify said committee of the fact, and who shall furnish said committee with such clerical assistance as may be necessary for the proper discharge of their duties. It shall be the duty of said committee, on receiving such notice, to immediately act on and render a decision in such case. *Id.* ch. 114, sec. 163.

#### **Committee of appeals—Oath—Bond—Who may serve on :**

The said committee of appeals shall, before entering upon the duties of their office, take an oath, as in case of other inspectors of grain, and shall execute a bond in the penal sum of five thousand dollars; with like conditions as is provided in the case of other inspectors of grain, which said bonds shall be subject to the approval of the board of railroad and warehouse commissioners. *It is further provided*, that the salaries of said committee of appeal shall be fixed by the board of railroad and warehouse commissioners, and be paid from the inspection fund, or by the party taking the appeal, under such rules as the commission shall prescribe; and all necessary expenses incurred in

carrying out the provisions of this act, except as herein otherwise provided, shall be paid out of the funds collected for the inspection service upon the order of the commissioners: *Provided*, that no person shall be appointed to serve on the committee of appeals who is a purchaser of, or receiver of grain, or other articles to be passed upon by said committee. (As amended by act approved June 26, 1885. In force July 1, 1885, L. 1885, p. 178.) *Id.* ch. 114, sec. 164.

#### **“ Registered for collection ”—Inspection fees :**

No grain shall be delivered from store from any warehouse of Class A, for which or representing which warehouse receipts shall have been issued, except upon the return of such receipts stamped or otherwise plainly marked by the warehouse register with the words “registered for collection” and the date thereof; and said board of commissioners shall have power to fix the rates of charges for the inspection of grain, both into and out of warehouses; which charges shall be a lien upon all grain so inspected and may be collected of the owner, receivers or shippers of such grain, in such manner as the said commissioners may prescribe. *Id.* ch. 114, sec. 165.

#### **Repeal :**

Section 13 of the act to which this is an amendment, is hereby repealed: *Provided*, the provisions contained in said section shall remain in force until the grades for the inspection of grain shall have been established by the commissioners, as provided in section 1 of this act. (Grades fixed by commissioners, July 1, 1873.) *Id.* ch. 114, sec. 166.

#### **Delivery—Penalty :**

Every railroad corporation which shall receive any grain in bulk for transportation to any place within the state, shall transport and deliver the same to any consignee, elevator, warehouse, or place to whom or to which it may be consigned or directed: *Provided*, such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every such corporation shall permit connections to be made and maintained with its track

to and from any and all public houses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section, shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages result from any depreciation in the value of such property by such neglect or refusal to deliver such grain as directed, or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered, and costs of suit, including such reasonable attorney's fees as shall be taxed by the court. And in case of any second or later refusal of such railroad corporation to comply with the requirements of this section, such corporation shall be by the court, in action on which such failure of refusal shall be found, adjudged to pay, for the use of the people of this state, a sum of not less than \$1,000, nor more than \$5,000, for each and every such failure or refusal, and this may be a part of the judgment of the court in any second or later proceeding against such corporation. In case any railroad corporation shall be found guilty of having violated, failed or omitted to observe and comply with the requirements of this section, or any part thereof, three or more times, it shall be lawful for any person interested to apply to a court of chancery, and obtain the appointment of a receiver to take charge of and manage such railroad corporation until all damages, penalties, costs and expenses adjudged against such corporation for any and every violation shall, together with interest, be fully satisfied. *Id.* ch. 114, sec. 120.

#### **Appointment—Term :**

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That a commission which shall be styled "Railroad and Warehouse Commission," shall be appointed as follows: within twenty days after this act shall take effect, the governor shall appoint three persons as such commissioners, who shall hold their office until the next meeting of the general assembly, and until their successors are appointed and qualified. At the next meeting of the general assembly, and every two years thereafter, the governor, by and with the advice and consent of the senate, shall appoint three persons

as such commissioners, who shall hold their offices for the term of two years from the first day of January in the year of their appointment, and until their successors are appointed and qualified. *Id.* ch. 114, sec. 167.

#### **Qualifications :**

No person shall be appointed as such commissioner who is at the time of his appointment in any way connected with any railroad company or warehouse, or who is directly or indirectly interested in any stock, bond, or other property of, or is in the employment of any railroad company or warehouseman; and no person appointed as such commissioner shall during the term of his office, become interested in any stock, bond or other property of any railroad company or warehouse, or in any manner be employed by or connected with any railroad company or warehouse. The governor shall have power to remove any such commissioner at any time, in his discretion. *Id.* ch. 114, sec. 168.

#### **Oath—Bond :**

Before entering upon the duties of his office, each of the said commissioners shall make and subscribe, and file with the secretary of state, an affidavit, in the following form: I do solemnly swear (or affirm as the case may be), that I will support the constitution of the United States and the constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of commissioner of railroads and warehouses, according to the best of my ability. And shall enter into bonds, with security to be approved by the governor, in the sum of \$20,000, conditioned for the faithful performance of his duty as such commissioner. *Id.* ch. 114, sec. 169.

#### **Statement by warehouseman :**

It shall be the duty of every owner, lessee and manager of every public warehouse in this state to furnish in writing under oath, at such times as such railroad and warehouse commissioners shall require and prescribe, a statement concerning the condition and management of his business as such warehouseman. *Id.* ch. 114, sec. 175.

**Report by commissioners—Examination :**

Such commissioners shall, on or before the first day of December, in each year, and oftener if required by the governor to do so, make a report to the governor of their doings for the preceding year, containing such facts, statements and explanations as will disclose the actual workings of the system of railroad transportation and warehouse business in their bearings upon the business and prosperity of the people of this state, and such suggestions in relation thereto as to them may seem appropriate, and particularly, first, whether in their judgment the railroads can be classified in regard to the rate of fare and freight to be charged upon them, and if so, in what manner; second, whether a classification of freight can also be made, and if so, in what manner. They shall also, at such times as the governor shall direct, examine any particular subject connected with the condition and management of such railroads and warehouses, and report to him in writing their opinion thereon with their reasons therefor. *Id.* ch. 114, sec. 176.

**Examinations of railroads and warehouses—Suits :**

Said commissioner shall examine into the condition and management, and all other matters concerning the business of railroads and warehouses in this state, so far as the same pertain to the relation of such roads and warehouses to the public, and to the accommodation and security of persons doing business therewith; and whether such railroad companies and warehouses, their officers, directors, managers, lessees, agents and employees comply with the laws of this state now in force, or which shall hereafter be in force concerning them. And whenever it shall come to their knowledge, either upon complaint or otherwise, or they have reason to believe that any such law or laws have been or are being violated, they shall prosecute or cause to be prosecuted all corporations or persons guilty of such violation. In order to enable said commissioners efficiently to perform their duties under this act, it is hereby made their duty to cause one of their number, at least once in six months, to visit each county in the state, in which is or shall be located a railroad station, and personally inquire into the man-

agement of such railroad and warehouse business. *Id.* ch. 114, sec. 177.

#### **Cancellation of warehouse licenses :**

Said commissioners are hereby authorized to hear and determine all applications for the cancellation of warehouse licenses in this state which may have been issued in pursuance of any laws of this state, and for that purpose to make and adopt such rules and regulations concerning such hearing and determination as may, from time to time, by them be deemed proper. And if, upon such hearing, it shall appear that any public warehouseman has been guilty of violating any law of this state concerning the business of public warehousemen, said commissioners may cancel and revoke the license of said public warehouseman, and immediately notify the officer who issued such license of such revocation and cancellation and no person whose license as a public warehouseman shall be cancelled or revoked, shall be entitled to another license or to carry on the business in this state of such public warehouseman, until the expiration of six months from the date of such revocation and cancellation, and until he shall have again been licensed: *Provided*, that this section shall not be so construed as to prevent any such warehouseman from delivering any grain on hand at the time of such revocation or cancellation of his said license. And all licenses issued in violation of the provisions of this section shall be deemed null and void. *Id.* ch. 114, sec. 178.

#### **Power to examine books, etc. :**

The property, books, records, accounts, papers and proceedings of all such railroad companies, and all public warehousemen, shall at all times, during business hours, be subject to the examination and inspection of such commissioners, and they shall have power to examine, under oath or affirmation, any and all directors, officers, managers, agents and employees of any such railroad corporation, and any and all owners, managers, lessees, agents and employees of such public warehouses and other persons, concerning any matter relating to the condition and management of such business. *Id.* ch. 114, sec. 179.

**May examine witnesses, etc. :**

In making any examination as contemplated in this act for the purpose of obtaining information, pursuant to this act, said commissioners shall have the power to issue subpœnas for the attendance of witnesses, and may administer oaths. In case any person shall willfully fail or refuse to obey such subpœna, it shall be the duty of the circuit court of any county, upon application of the said commissioners, to issue an attachment for such witness, and compel such witness to attend before the commissioners, and give his testimony upon such matters as shall be lawfully required by such commissioners; and the said court shall have power to punish for contempt, as in other cases for refusal to obey the process and order of such court. *Id.* ch. 114, sec. 180.

**Penalty against witness :**

Any person who shall willfully neglect or refuse to obey the process of subpœna issued by said commissioners, and appear and testify as therein required, shall be deemed guilty of a misdemeanor, and shall be liable to an indictment in any court of competent jurisdiction, and on conviction thereof shall be punished for each offense, by a fine of not less than \$25 nor more than \$500, or by imprisonment of not more than thirty days, or both, in the discretion of the court before which such conviction shall be had. *Id.* ch. 114, sec. 181.

**Penalty against railroad companies, warehousemen, etc. :**

Every railroad company, and every officer, agent or employee of any railroad company, and every owner, lessee, manager or employee of any warehouse, who shall willfully neglect to make and furnish any report required in this act, at the time herein required, or who shall willfully and unlawfully hinder, delay or obstruct said commissioners in the discharge of the duties imposed upon them, shall forfeit and pay a sum of not less than \$100 nor more than \$5,000 for each offense, to be recovered in an action of debt in the name of the state of Illinois; and every railroad company, and every officer, agent or employee of any such railroad company, and every owner, lessee, manager, or agent or employee of any public warehouse, shall

be liable to a like penalty for every period of ten days it or he shall willfully neglect or refuse to make such report. *Id.* ch. 114, sec. 182.

**Attorney general and state's attorney to prosecute suits :**

It shall be the duty of the attorney general, and the state's attorney in every circuit or county, on the request of said commissioners, to institute and prosecute any and all suits and proceedings which they, or either of them, shall be directed by said commissioners to institute and prosecute for a violation of this act, or any law of this state concerning railroad companies or warehouses, or the officers, employees, owners, operators or agents of any such companies or warehouses. *Id.* ch. 114, sec. 183.

**In name of people—Pay—Qui tam actions :**

All such prosecution shall be in the name of the people of the state of Illinois, and all moneys arising therefrom shall be paid into the state treasury by the sheriff or other officer collecting the same; and the state's attorney shall be entitled to receive for his compensation, from the state treasury on bills to be approved by the governor, a sum not exceeding ten per cent of the amount received and paid into the state treasury as aforesaid: *Provided*, this act shall not be construed so as to prevent any person from prosecuting any *qui tam* action as authorized by law, and of receiving such part of the amount recovered in such action as is provided under any law of this state. *Id.* ch. 114, sec. 184.

**Rights of individuals saved :**

This act shall not be so construed as to waive or affect the right of any person injured by the violation of any law in regard to railroad companies or warehouses, from prosecuting for his private damages in any manner allowed by law. *Id.* ch. 114, sec. 185.

An act to provide that the railroad and warehouse commission may keep and use a common seal for the authentication of its acts, records and proceedings. (Approved June 19, 1891. In force July 1, 1891, L. 1891, p. 185.)

**Seal—How records, etc., authenticated :**

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the railroad and warehouse commission of this state may, for the authentication of its records, process and proceedings, adopt, keep and use a common seal, of which seal judicial notice shall be taken in all courts of this state; and any process, writ, notice or other paper which the said commission may be authorized by law to issue shall be deemed sufficient if signed by the secretary of said commission and authenticated by such seal; and all acts, orders, proceedings, rules of inspection, entries, minutes, schedules and records of said commission may be proved in any court of this state by a copy thereof, certified to by the secretary of said commission, and with the seal of said commission attached.

*Id. ch. 114, sec. 185a.*

An act to provide for the appointment of state weigh-masters. (Approved June 23, 1883. In force July 1, 1883, L. 1883, p. 172.)

**Weigh-master—Appointment of :**

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That there shall be appointed by the Railroad and Warehouse Commissioners in all cities where there is state inspection of grain, a state weigh-master and such assistants as shall be necessary. *Id. ch. 114, sec. 186.*

**Duties of :**

Said state weigh-master and assistants shall, at the places aforesaid supervise and have exclusive control of the weighing of grain and other property which may be subject to inspection, and the inspection of scales and the action and certificate of such weigh-master and assistants in the discharge of their aforesaid duties shall be conclusive upon all parties in interest.

*Id. ch. 114, sec. 187.*

**Fix fees :**

The Board of Railroad and Warehouse Commissioners shall fix the fees to be paid for the weighing of grain or other property, which fees shall be paid equally by all parties interested in the

purchase and sale of the property weighed, or scales inspected and tested. *Id.* ch. 114, sec. 188.

**Weigh-master—Qualifications—Bond—Compensation :**

Said state weigh-master and assistants shall not be a member of any board of trade or association of like character; they shall give bonds in the sum of five thousand dollars (\$5,000) conditioned for the faithful discharge of their duties, and shall receive such compensation as the Board of Railroad and Warehouse Commissioners shall determine. *Id.* ch. 114, sec. 189.

**May adopt rules :**

The Railroad and Warehouse Commissioners shall adopt such rules and regulations for the weighing of grain and other property as they shall deem proper. *Id.* ch. 114, sec. 190.

**Neglect of duty—Penalty :**

In case any person, warehouseman or railroad corporation, or any of their agents or employees, shall refuse or prevent the aforesaid state weigh-master or either of his assistants from having access to their scales, in the regular performance of their duties in supervising and weighing of any grain or other property in accordance with the tenor and meaning of this act they shall forfeit the sum of one hundred (\$100) dollars for each offense, to be recovered in an action of debt, before any justice of the peace, in the name of the people of the state of Illinois; such penalty or forfeiture to be paid to the county in which the suit is brought, and shall also be required to pay all costs of prosecution. *Id.* ch. 114, sec. 191.

**Fraudulent receipts—Issuing by warehousemen and others :**

Whoever fraudulently makes or utters any receipt, or other written evidence of the delivery or deposit of any grain, flour, pork, wool, salt, or other goods, wares or merchandise, upon any wharf or place of storage, or in any warehouse, mill, store or other building, when the quantity specified therein has not in fact been delivered or deposited as stated in such receipt or other evidence of the delivery or deposit thereof, and is not, at the time of issuing the same still in store, and the property

of the person to whom or to whose agent the receipt is issued, or for the whole or any part of which any other receipt is outstanding or uncancelled, shall be imprisoned in the penitentiary not less than one nor more than ten years. *Id.* ch. 38, sec. 124.

#### **Removal of warehouse goods :**

Whoever, having given any such receipt or written evidence of deposit or storage as is specified in the preceding section, or being in the possession or control of such property, shall sell, incumber, ship, transfer, or in any manner remove from the place of storage, or allow the same to be done, any such grain, flour, pork, wool, salt, or other goods, wares and merchandise, without the written consent of the holder of such receipt or other evidence of deposit or storage, except in cases of necessity for the purpose of saving such property from loss or damage by fire, flood or other accident, shall be imprisoned in the penitentiary not less than one nor more than ten years. *Id.* ch. 38, sec. 125.

#### **Embezzlement by commission merchants and others :**

If any warehouseman, storage, forwarding or commission merchant, or other person selling on commission, or his agent, clerk of servant, shall convert to his own use any fruit, grain, flour, beef, pork or other property, or the proceeds or avails thereof, without the consent of the owner thereof, or shall fail to pay over the avails or proceeds thereof, less his proper charges, on demand by the person entitled to receive the same, or his duly authorized agent, he shall be fined not exceeding \$1,000, or confined in the county jail not exceeding one year, or both, and shall be liable to the person injured in double the value of the property or amount of the money so converted. *Id.* ch. 38, sec. 78.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment and sale—The depositing of grain in a public warehouse and the mixing thereof with other grain is a bailment.*

If grain be deposited in a public warehouse in this state to be mixed with the grain of other persons, under the warehouse act, such depositary becomes the owner of an equal quantity of grain of the same kind and quantity as that deposited and the title to such deposited grain does not pass to the warehouseman. In short, it is a bailment only and not a sale. *National Bank of Pontiae v. Langan*, 28 Ill. App. 401; *Meadowcraft v. German National Bank*, 95 Ill. 124; *Canadian Bank v. McCrea*, 106 Ill. 281.

*Same—When sale and not a bailment—Private warehousemen—Receipt construed.*

Where plaintiff delivered wheat to the defendant, a mill-owner, and received therefor a receipt in which it was stated that the defendant had received the wheat and that he was to take the market price for the same whenever he saw fit to sell, it was held that this was not a contract of storage but a sale of the wheat and that the title passed to the millowner. The fact that the wheat was mixed with other wheat in the mill does not change the case. The wheat being subsequently destroyed by fire, the defendant was liable for the value thereof. *Ives v. Hartley*, 51 Ill. 520; *Lonergan v. Stewart*, 55 Ill. 44.

*Same—Sale—Inability to return same grain—Destruction by fire.*

A warehouseman received grain without any special contract from which it could be shown whether it was a bailment or a sale. The evidence showed that there was a notice posted in the warehouse, in which it was stated that grain would be received for storage for one month free of charge and other statements from which it would be inferred that the transaction was a bailment; but the evidence further showed that the warehouseman disposed of the grain and counted on being able to

subsequently purchase a sufficient quantity of grain in event that the depositor made a demand for the same or gave to the warehouseman an order to sell. Subsequently, a fire occurred and the warehouse and contents were destroyed. In an action against the warehouseman for the value of the grain, it was *held* that he was liable on the ground that the transaction was a sale and not a bailment. *Cloke v. Dowse*, 38 Ill. App. 252, aff'd 137 Ill. 393.

*Same—The principle determining when it is a bailment and when a sale.*

The principle determining when the transaction constitutes a bailment and when a sale is as follows: When the identical thing delivered is to be restored, though in an altered form, the contract is one of bailment and the title to the property is not changed, but when there is no obligation to restore the specific article and the warehouseman is at liberty to restore another thing of equal value he becomes the debtor to make the return, and the property is changed—it is a sale. Evidence was received to prove a custom among warehousemen showing that depositors who stored grain never expected to receive the identical grain back, but to get their money for the same at the market price on the day on which the demand was made. *Lonergan v. Stewart*, 55 Ill. 44.

*Same—Special agreement with warehouseman—Instruction to jury—Bailment.*

It was perfectly proper for one to make an agreement with his warehouseman for the mixing of the grain, by which the title might be determined; this entirely independent of the constitution and the statutes relating to warehousemen. The evidence as to the terms of the agreement was conflicting, the defendant testifying positively to facts which would make the agreement one of bailment, the plaintiff's testimony was to the effect that the transaction constituted a sale. The court refused to give an instruction prayed for by defendant to the effect that if they believed his testimony they should find for him this *held* reversible error. *Ardinger v. Wright*, 38 Ill. App. 98.

**B.**

*Ordinary care—Grain purchased for customers—Different rule.*

Where warehousemen purchased grain for others, which was subsequently stored in their warehouse, the following instruction to the jury in an action brought against the warehousemen for the recovery of the value of the grain, *held* correct; that, by the terms of the receipt given by the defendants to the plaintiff, the defendants became the bailors of the plaintiff and were only bound to take reasonable care of the grain and have it ready for delivery for a reasonable time, and if the same was injured without the negligence of the defendant, they were not responsible for such injury, and that they had a right to charge storage after a reasonable time, if the jury believed from the evidence that the plaintiff failed to take it away within a reasonable time after being notified to do so. *Myers et al. v. Walker*, 31 Ill. 353; *St. Louis, A. & T. H. R. R. Co. v. Montgomery*, 39 Ill. 335; *Chicago & A. R. R. v. Scott*, 42 Ill. 132.

*Who a public warehouseman.*

The fact that one keeps a public warehouse is of itself notice to the world that the property therein stored is held for others, at least sufficient to put parties interested on inquiry. *National Bank of Pontiac v. Langan*, 28 Ill. App. 401; *Broadwell v. Howard*, 77 Ill. 305.

*Warehousemen—Duty to the public—Public agencies—Prohibited from speculation in grain stored in their own warehouses.*

The evidence showed that the defendant was the owner of a large warehouse in the city of Chicago, doing business as a public warehouseman under the warehouse act of 1871, and amendments thereto, that it was his practice to purchase grain in large quantities, overbidding legitimate grain dealers to the extent, in many instances, of one fourth of one cent per bushel, and thereafter disposing of the same by under-selling such bidders and obtaining his profit by virtue of his storage charges. The effect was to practically prohibit competition and resulted in the warehousemen becoming the owners of a large proportion of the grain in the market. It was *held* that public warehouses, established under the law, were public agencies and

the defendant as a licensee pursued a public employment and that he was therefore charged with a public duty; *further*, that his course of dealing was inconsistent with the safe and important performance of his duty to the public. The evidence failed to sustain the contention of the defendant that, at the time of the passage of the warehouse act, it was the custom among owners of large warehouses to store their own grain therein. *Central Elevator Co. v. The People*, 174 Ill. 203.

*Approaches to warehouses—Not bound to a high degree of care—Approaches to railroad terminals distinguished.*

A warehouseman is not obliged to exercise as high a degree of care as a common carrier in providing for safe approaches to his warehouse. It would not be consistent with the analogy of the law to hold that a warehouseman, who is only held to ordinary care in conducting his business, should be held to an extraordinary care in protecting persons in coming to his warehouse to transact business with him. He is liable only for ordinary care in the structure of his warehouse and appurte-  
nances. *Buckingham v. Fisher*, 70 Ill. 121.

*Degree of liability—Real object of the transaction.*

Where plaintiff hired the defendant, a warehouseman, to remove her goods and store them, and several months thereafter to return them to her, it was *held* that this was clearly a contract of storage and that the defendant could not be held to the liability of a common carrier. Storage was the main thing in contemplation of the parties and the removal of the goods to the warehouse and the return to the bailor, in the same city, were necessarily incidental to it. The defendant was obliged to exercise only ordinary care. *Armfield v. Humphrey*, 12 Ill. App. 90.

*Conversion—Action in assumpsit—Tort waived.*

If warehousemen have wrongfully converted property intrusted to their care the bailor has the right to waive the tort and sue in assumpsit for the money received on the sale of the grain. *Ires v. Hartley*, 51 Ill. 520; *Leonard v. Dunton*, 51 Ill. 482.

*Change of ownership—Warehouse conducted by bank—Same—Liability for conversion—Ultra vires no defense.*

The defendant, a national bank, took possession of a warehouse, after default in the payment of obligations to it, as security for the payment of such debts. The refusal to deliver grain stored therein, to the holders of the warehouse receipts, constituted a conversion for which the bank was liable. The fact that, under the charter of the bank, it was not authorized to conduct a warehouse business, is no defense. The question is whether or not there was a conversion, and, if there were, it makes no difference whether the bank was authorized by its charter to conduct a warehouse business or not. *German National Bank v. Meadowcroft*, 4 Ill. App. 630, aff'd 95 Ill. 124.

*Pleading—Averment to furnish storage.*

The averment that the appellees had kept and performed all the covenants on their part and at all times were willing to furnish storage for the company to the amount of one million bushels, is not an averment, or the equivalent of an averment, that they were at all times willing and ready to furnish the storage that may be necessary for a business of five millions of bushels in a year. Therefore, a demurrer to a petition containing the above allegation should have been sustained. *Chicago, M. & St. P. Ry. Co. v. Hoyt*, 37 Ill. App. 64; *Same v. Same*, 50 Ill. App. 583; *Same v. Same*, 44 Ill. App. 48.

*Warehouse commission—Action of, in depriving a warehouseman of his license, reviewable by the courts—Certiorari.*

Where the Railroad and Warehouse Commission of Illinois had revoked the license of defendants, alleging that they violated the law of the state, concerning the business of public warehousemen, it was contended on the behalf of the commission, that its action in investigating the facts and determining that there had been a violation of the law by the warehouseman was a judicial act involving the exercise of judicial discretion, and, therefore, was not reviewable by the courts. The court held that this contention could not be maintained and, therefore, it reviewed on certiorari the evidence of the Railroad and Warehouse Commission where it had revoked the

license of the warehouseman for the alleged violation of law. *Cantrell et al. v. Seaverns*, 64 Ill. App. 273.

*Same—Warehouseman storing his own grain prohibited—No implication of the legality of such practice derived from inaction of warehouse commission.*

It appeared that, after the act of 1871, which, among other things, provided that warehousemen should not deposit their own grain in their warehouses; that the practice of doing so was continued, and it further appeared that the Warehouse Commission knew of the continuance of this practice. It was *held* that the commission was derelict in its duty, that it should have brought such cases to the attention of the attorney general for prosecution, and that the contention that this inaction on the part of the commission amounted to a construction of the law that such practice was legal, could not be sustained. *Central Elevator Co. v. The People*, 174 Ill. 203.

*Same—The right of the Railroad and Warehouse Commission to inspect grain a legal one—Police power.*

In an action by the people against one who had formerly been chief inspector of grain, appointed by the Railroad and Warehouse Commission, for the recovery of fees collected by him, which he had appropriated to his own use, it was *held* that such appointment having been made by said commission, pursuant to authority conferred upon it by the act of 1871, by which it was created, was a proper delegation of police power by the legislature, and further, that the provisions made by the Railroad and Warehouse Commission, in regard to the fees to be charged for such a collection was a proper delegation of power by the legislature. *The People v. Harper et al.*, 91 Ill. 357.

*Inspectors of grain—“Legally appointed inspectors” defined.*

The warehouse law of 1871, as amended by act of 1897, provided that any person who shall assume to act as an inspector of grain, who has not first been so appointed and sworn, shall be held to be an imposter, etc., and subject to a fine therein provided. It was *held* that such inspectors, in order to be legally appointed must have received their commission pur-

suant to the terms of the amendatory act of 1879 read in connection with the original warehouse law of 1871. Public inspection being authorized under section 14, private inspection thereupon became unlawful. *Dutcher v. The People*, 11 Ill. App. 312.

*Evidence—Delivery—Storage in warehouse—Custom.*

Delivery pursuant to a contract of sale cannot be shown by storage in warehouse, nor will evidence be received to show that such was the custom when it has been proved that the party claiming the property had no knowledge of any such custom. *Larson v. Johnson*, 42 Ill. App. 198.

*Same—Recitals in receipts given by draymen.*

The court instructed the jury that statements contained in the receipts signed for the warehouse company by the draymen or teamsters, that the flour when received by them was in good condition, were not binding on the warehouse company as admissions. Further, that such receipts could only be considered as evidence of the course of business employed by the warehouseman in the transactions to which they relate. This instruction was held to be correct. *Central Warehouse Co. v. Sargeant*, 40 Ill. App. 438.

**H.**

*Storage charges—Failure to pay—Demand.*

It appeared from the evidence that the defendant, a warehouseman, received wheat for storage, for which there should be no charge for a short time in order that the plaintiff might have the opportunity to remove the same. The warehouseman also agreed to deliver the wheat upon demand by the owner. In the trial of the case for the recovery of the wheat or the value thereof, it was *held* that it was error for the court to instruct the jury that, if it found that the plaintiff had not offered to pay a reasonable charge before suit brought, it should find for the defendant. The appellate court held that plaintiff was entitled to judgment for the value of the wheat and that the defendant was, at most, entitled to a deduction from such

amount equivalent to a reasonable charge for storage. *Leonard v. Dunton et al.*, 51 Ill. 482.

*Same—Liability for—Warehouse receipt.*

Corn was removed from a warehouse by the assignee of the warehouse receipt; in an action against him for the recovery of the storage charges, it was held that although the lien against the corn for the charges was gone, the warehouseman could still hold such assignee personally responsible therefor. Where one accepts a warehouse receipt he, at the same time, assumes liability to pay storage charges accrued against property represented thereby. *Cole v. Tyng et al.*, 24 Ill. 100.

*Lien—Not lost by fraudulent issue of receipt.*

The mere fact that a warehouseman fraudulently issues receipts for goods not on store with him does not deprive him of his lien for storage charges against other goods in his possession. *Low v. Martin*, 18 Ill. 286.

*Same—When goods are surrendered only lien allowed will be that stipulated for.*

At the time of the disastrous fire in Chicago there were more than 1,000,000 bushels of grain stored in the warehouses, a large proportion of which was destroyed. The Board of Trade, with the consent of the warehousemen, took possession of all wheat remaining in the warehouses immediately after the fire, the warehousemen reserving a lien of two cents per bushel for storage. The grain was sold, and after the proceeds were obtained the warehousemen claimed an amount in addition to the sum agreed upon for storage. It was held that they were entitled to but two cents per bushel less the expense of preserving it. The manner in which the warehousemen released the property constituted a waiver of all liens thereon except such as were expressly reserved by the stipulation existing before the sale. *Board of Trade v. Buckingham et al.*, 65 Ill. 72.

*Same—Lost by parting with the goods not revived if possession be again obtained.*

The court ruled that, where goods were redelivered by a

warehouseman to the consignee upon receipt of the note of the consignee for the freight due, that the lien which the warehouseman held was lost and that when the property again came into possession of the warehouseman, there was no revival of the lien. The above ruling was *held* correct. *Hale v. Barrett*, 26 Ill. 195.

*Same—Not subject to attachment as property of the warehouseman.*

Where, in an action against a warehouseman, an attachment is levied by the sheriff against not only the warehouse itself but against the property stored therein on the ground that the warehouse company, having a lien on all the property stored for its lawful storage charges, that such lien was attachable property. The court *held* that this was a wrongful levy. While it is true that such warehouse company had a lien on goods stored, it was but a mere personal lien and was nothing more than a right to retain possession of said goods until the charges for storage were paid or tendered. Liens of this character confer no rights beyond the mere right to retain the property—they give no power of sale. It follows, therefore, that after the sheriff has seized stored goods, by virtue of his attachment writ, and taken same into his possession, no right or interest of the warehouseman in the goods remains in the sheriff's hands which could be subject to sale on execution. It was *further held* that, as the property was stored in a public warehouse, it was protected from removal therefrom by the policy of the law. *Hanchett v. First National Bank*, 25 Ill. App. 274.

*Contract between warehouseman and railroad company—Inability to store amount of grain offered—Reasonable construction of contract.*

A railroad company agreed with a warehouseman that the "total amount of grain received at its elevator shall be at least 5,000,000 bushels on the average for each year," during the term of its lease. It appeared from the evidence that the warehouseman could not store at any one time more than 1,100,000 bushels. The above section of the contract was

construed to mean that the railroad company was obliged, during the ten years in which the agreement was to continue in force, to offer to the warehouseman an average of 5,000,000 bushels of wheat per year. *Dunlap et al. v. Chicago, M. & St. P. Ry. Co.*, 151 Ill. 409.

*Warehouseman has right to terminate storage contract.*

Where a warehouseman made a contract with the depositor of grain, by the terms of which the warehouseman agreed to store the same at one-fourth ( $\frac{1}{4}$ ) cent per month until sold, it was *held* that the warehouseman could terminate such contract upon giving notice to the depositor of his intention to do so. The court said that it was not reasonable to suppose that a warehouseman, by a contract of this kind, should be hampered through life for the inconsiderable compensation stipulated for therein. *Cushman v. Hayes*, 46 Ill. 145.

I.

*Commingling of goods—When replevin may be maintained.*

In order to maintain an action of replevin against a warehouseman, where the property has been commingled with other property stored, the plaintiff must show that the property replevied was his property, that is, the identical property delivered in store; or that the intermixture by defendant, which made identification of his property practically impossible, was the fault of the warehouseman, or that it was done at least without consent of the plaintiff. *Low v. Martin*, 18 Ill. 286.

*Same—Custom—Constitutes sale—Depository becomes debtor of owner.*

It was shown that it was customary in Chicago for commission merchants to receive grain consigned to them by their customers and to immediately deposit the same in a public warehouse, where it would be mixed with other grain of a like grade and quality, it was *held* that, upon this being done, the warehouseman did not hold the grain as a bailee but that he was the debtor of the owner who was represented by his commission merchant. If the owner had desired his grain kept separately and the identical grain sold when he might give

the order, he could have so provided under the terms of the Warehouse Act. *Bailey v. Bensley et al.*, 87 Ill. 556.

*Same—Right to maintain trover not affected thereby—A bailment and not a sale.*

Where oats were stored in a warehouse and mingled with other oats, it was *held* that this fact did not deprive the owner of his right to maintain trover. *Further*, that, by the intermixture, his title to the property was not affected and that each individual owner would be entitled to retain and control an ownership of his particular portion of the whole; that neither of the parties in interest would have a right to dispose of the other's share of the entire amount, and that if one did so, trover would lie for the conversion. *German National Bank v. Meadowcroft*, 95 Ill. 124; *Howe v. Munson*, 65 Ill. App. 674.

*Same—Common property—In case of loss, to be borne pro rata—Equity jurisdiction.*

Where grain belonging to several different owners was stored in a public warehouse in a common mass, without objection on the part of the several owners, it became common property owned by all, in the proportions in which each had contributed to the common mass. It being owned in common, the owners are all liable to sustain any loss which may occur by diminution, decay, or otherwise, in proportion to their respective interests. Persons who purchase warehouse receipts become likewise liable to sustain their *pro rata* share of any loss, precisely as would the persons from whom they purchased the receipt. A court of equity, as part of its ordinary and inherent jurisdiction, will, in view of the fact that the property is a trust one, compel the proper protection thereof, and will require the trustee to render the court an account of his proceedings under the trust. *Dole et al. v. Olmstead*, 36 Ill. 150; *Same v. Same*, 41 Ill. 344.

*Same—Assignment by warehouseman—Partial delivery.*

Where, in the above case, the warehouseman assigned all the interest which he had in grain stored in his warehouse, belonging to various parties, which grain was there commingled with

grain of his own, it was *held* that such assignee held title to all of the grain as trustee, that he was bound to deliver the grain, belonging to the holders of receipts, which was in store at the time, and, having done so, he was exonerated from further liability. If, however, it then appeared that any grain remained, the warehouseman was entitled thereto. *Id.*

*Substitution of other property—Equitable lien—Estoppel.*

A warehouseman becoming insolvent, a receiver was appointed, upon petition of his creditors. It appeared that he had issued warehouse receipts for a large amount of goods stored in his warehouse and that the owner of the goods had pledged the receipts to a bank to secure a loan. Subsequently, and without the bank's knowledge, the goods represented by the receipts were removed by the depositor, with the consent of the warehouseman, and other goods were substituted in their place. It was contended in behalf of the general creditors that, by this substitution, the bank lost its lien upon the property. It was *held* that the bank had a right to suppose that the property pledged to them remained in the warehouse subject to their order at any time, on surrender of the receipt; that the action of the owner of the goods and of the warehouseman constituted a violation of the statute pertaining to warehousemen, and a fraud against the bank. It was further *held* that the bank had an equitable lien upon the stored property and that the warehouseman was estopped to deny that the goods in his warehouse were the identical goods represented by the receipt held by the bank. It was further *held* that the appointment of the receiver did not affect the claim of the bank, which claim was a lien against the goods prior to the appointment. *Hoffmann et al. v. Schoyer et al.*, 143 Ill. 598.

*Substitution of other goods—Constitutes a fraud.*

If a warehouseman, who has issued a negotiable warehouse receipt for property stored with him, allows the owner thereof to remove part of the goods so stored and substitute other goods in their stead, violates the law of the state and commits a fraud against such person as may then be the owner or holder of the receipt. *Id.*

**K.**

*Attachment—Grain deposited in mass not subject to, in an action against warehouseman.*

A deposit of grain in a common mass in a public warehouse is a bailment and not a sale thereof; therefore, in an action against a warehouseman, an attachment cannot be legally levied against the grain of any other depositors, the title thereto remaining in them. *National Bank of Pontiac v. Langan*, 28 Ill. App. 401.

**L.**

*Replevin—When it lies—Grain in bulk.*

In order to maintain an action of replevin, if the grain stored has been mixed with other grain, the plaintiff must show that such intermixture was a wrongful act of the warehouseman or, at least, was done without the consent of the plaintiff. *Low v. Martin*, 18 Ill. 286.

*Same—Breach of bond—Burden of proof.*

When the conditions of the replevin bond are broken, any person injured may sue in the name of the sheriff to his own use. Where a bank is one of the parties in interest in which an action is brought on a replevin bond, the court instructed the jury to the effect that the defendant must show, in addition to other facts, that it took the warehouse receipts pledged with it as collateral without notice of any fraud, whereas the correct instruction should have been that the plaintiff must show by the evidence that the defendant took the receipts with notice of the fraud. *Hanchett v. Buckley et al.*, 27 Ill. App. 159; *Atkin v. Moore*, 82 Ill. 240; Replevin Act, secs. 10, 25, ch. 119, R. S.; *Jones v. Simpson*, 116 U. S. 609; *Montague v. Hanchett*, 20 Ill. App. 222.

**M.**

*Pledge—Right to sell—Notice.*

A pawnee is not bound to wait for a sale under a decree of foreclosure as a mortgagee is in the case of a mortgage upon land, but he may sell, without judicial process, upon giving a reasonable notice to the debtor to redeem. The notice to the pledgor is indispensable, as to the time and place of sale,

in the absence of a contract that the pledgee may sell of his own motion. *Cushman v. Hayes*, 46 Ill. 145.

N.

*Negligence—Misdelivery—Warehouseman responsible—Sampler's ticket not a warehouse receipt.*

It appeared from the evidence that it was the custom in Peoria, when grain was received, to have a sampler, who was employed by the Board of Trade, make an examination of the wheat and issue what was known as a sampler's ticket therefor, together with a sample of the wheat. This was done, and the wheat stored with defendant, a warehouseman. A sale of the wheat took place on the Board of Trade and the purchaser received, in accordance with the custom, the sampler's ticket with the name of the seller and of the purchaser written thereon, together with the sample. The warehouseman delivered to the purchaser the wheat represented, upon the presentation to him of such ticket. It appeared that the check given by the purchaser, for the payment of such wheat, was not paid. It was held that the warehouseman acted beyond his authority when he delivered the wheat upon the presentation of this ticket, that in the absence of authority from the seller such ticket was not equivalent to a warehouse receipt, and that the warehouseman was responsible to the owner for the value of the wheat. *Peoria & Pekin Union Ry. Co. v. Buckley et al.*, 114 Ill. 337.

*Cold storage—Agreement as to temperature—Instruction to the jury.*

In an action, brought by plaintiff for the recovery of storage charges, for having placed in cold storage a quantity of onions belonging to the defendant, it appeared that there was a great conflict of testimony as to whether there was an agreement concerning the temperature in which the onions were to be stored. Under these circumstances, instruction to the jury to the following effect was held erroneous: If it found, from the evidence, that the plaintiff violated his contract with the defendant in failing to keep the onions in question *in the temperature agreed upon* and if the onions rotted as a result of such failure, the jury was then to find for the defendant. From the above charge,

the jury might conclude that a certain temperature had been agreed upon, whereas this fact was in controversy. *Western Union Cold Storage Co. v. Ermeling*, 73 Ill. App. 394.

## O.

### *Measure of damages.*

Where, in an action for the conversion of wheat stored, the market price thereof being proved, it is a fair presumption that the warehouseman procured such price and the measure of damages is the value of the wheat at the time it should have been delivered. *Leonard v. Dunton et al.*, 51 Ill. 482.

### *Same—Where taking not tortious.*

Where there has been a breach of contract of bailment and the taking of the property has been tortious, assumpsit lies and the value of the property converted, at the time of demand, is the proper measure of damages. The actual amount received is the proper measure where the taking was not tortious. *O'Reer v. Strong*, 13 Ill. 690; *McDonald v. Brown*, 16 Ill. 320; *Cushman v. Hayes*, 46 Ill. 145.

### *Same—Cold storage.*

In a case where goods are received in cold storage and it is alleged that they have depreciated in value as result of failure on the part of the warehouseman to maintain the requisite temperature, the proper measure of damages should be the market value of the goods on the day of demand less the storage charges due thereon. *Western Union Cold Storage Co. v. Ermeling*, 73 Ill. App. 394.

## P.

### *Insurance—Joint owners have an insurable interest—Other insurance.*

A party stored grain in a warehouse and procured a policy of insurance thereon in the name of a member of the firm doing the warehouse business. There was an indorsement on the policy to the effect that loss, if any, should be paid to the depositor as his interest may appear. In an action, brought by such depositor, against the insurance company, after the destruction of the grain by fire, it was held that the action could

be maintained by him and that the issuance of the policy to a member of the firm operating the warehouse was proper and that he, or his partner, had an insurable interest in the grain. The policy also provided that there should be no other insurance placed thereon. It appeared that the warehousemen had insured the property in another company and that the loss was payable to them. *Held* that this did not constitute "other insurance" within the meaning of the policy. *Traders' Insurance Co. v. Pacaud et al.*, 150 Ill. 245.

*Contract by warehouseman to insure—Not responsible if suit on policy terminates against him without his fault.*

Defendant, a warehouseman, contracted with plaintiff to receive and store a large number of barrels of apples, the warehouseman agreeing to keep them insured with responsible companies. This the warehouseman did and, after destruction by fire, the warehouseman brought an action against the companies for the recovery of the amount stated in the policies. The warehouseman had given a receipt to the owner which provided that a large proportion of the property stored was to be insured only up to a date prior to the destruction by fire. This receipt had been given to the owner, at his request, and on account thereof, the warehouseman failed to recover from the insurance company for the loss of the property. In an action between the owner of the goods and the warehouseman, it was held that, as the latter had complied with all the terms of his contract, he could not be compelled to bear this loss but that it must fall upon the owner. *Cole v. Farorite*, 69 Ill. 457.

#### Q.

*Warehouse receipts—Issued by private warehousemen—Quasi-negotiable.*

Warehouse receipts, issued by private agents, or by warehousemen other than those described by the statute of this state as public warehousemen, are on the same footing as bills of lading in respect of their quasi-negotiable character. *Northrop et al. v. First National Bank*, 27 Ill. App. 572; *Western Union Ry. Co. v. Wagner et al.*, 65 Ill. 197.

*Same—Receipts issued by factors.*

Where it appeared that a firm, which had never been in the business of warehousing, issued what were in form warehouse receipts against their own property stored therein ; it was *held* that these were not warehouse receipts within the meaning of the statutes and that the holder thereof was in no better position than one who held an unrecorded chattel mortgage. *Trumbull et al. v. Union Trust Co. et al.*, 33 Ill. App. 319; aff'd, 137 Ill. 146.

*Warehouse receipts—Failure to state distinguishing marks as required by statute—Effect.*

Where warehouse receipts were issued for tea and other property stored, and they failed to have stated thereon the distinguishing marks as required by section 24 of the act of April 25, 1871, it was contended that the effect of such failure was that they were void since they were issued in violation of law. It was *held* that, since the statute did not impose any penalty in the case of such omission, the failure did not in any wise vitiate or impair the lien against the property represented, in favor of the person holding the receipt as security. In such a case, evidence will be received to ascertain the exact property intended to be represented by the receipt. *Hoffman et al. v. Schoyer et al.*, 143 Ill. 598.

*Same—Receipt held to be a sale by way of mortgage.*

Parties delivered to a warehouseman a large quantity of wheat and at the same time delivered to him an instrument in which it was stated that the wheat was delivered to the warehouseman free of all incumbrance except that held by the warehouseman and that the latter was at liberty to dispose of the same and to deduct his claim for storage and all accrued costs and charges and to pay the balance to the owner; further, that the assignment of such receipt by the warehouseman should at once vest in the holder full title and ownership in the property mentioned the same as if the receipt had been originally issued to him. It was *held* that this did not constitute a warehouse receipt but was a sale by way of mortgage. *Snydacker v. Blatchley et al.*, 72 Ill. App. 519.

*Same—When a valid tender.*

Where, under a contract of sale of wheat, the seller tenders warehouse receipt, this has been *held* to constitute a valid tender unless the purchaser objects thereto. Where the purchaser is absent, a mere readiness to tender warehouse receipt for the property cannot be construed to be a valid tender thereof. *McPherson v. Gale*, 40 Ill. 368; *McPherson v. Hall*, 44 Ill. 264.

*Same—Interpretation—Execution against warehouseman.*

Where a warehouseman received corn in storage and issued a receipt which was regular in all respects but that it had at the end thereof “Subject to their order for all advances of money on the same,” it was *held* that this expression did not reduce the transaction to a mere pledge. The testimony of the warehouseman showed that he purchased this corn with money furnished by the party in whose name the receipt was issued. Under these facts, an execution issued against the warehouseman would not lie against the corn. *Cool et al. v. Phillips & Carmichael*, 66 Ill. 216.

*Same—Same—Free storage—Reasonable time—Notice.*

A warehouseman received a quantity of corn and issued a receipt therefor in which it was stated that the same was received free of storage charges and was to be placed on boats to be sent by the owner. It was *held* that the warehouseman was only obliged to keep the same free of storage for a reasonable time, and, after notice to the owner, storage could be charged at a reasonable rate. *Myers et al. v. Walker*, 31 Ill. 353; *Same v. Same*, 24 Ill. 123.

*Same—Same—Where warehouseman sells the goods and subsequently receives them for storage—Not subject to execution against him.*

The law does not prohibit a public warehouseman from selling his own grain and, if he does so in good faith, he may, as well as any one else, become its future custodian. The fact that he keeps a public warehouse is of itself notice to the world that the property therein stored is held for others, at least, sufficient to put parties interested on inquiry. Under such

circumstances, an execution cannot be validly issued against property stored in his warehouse in the name of his purchaser. *Broadwell v. Howard et al.*, 77 Ill. 305.

*Same—Negotiability—Statute construed.*

Warehouse receipts are not negotiable instruments within the meaning of the statute of the state of Illinois. Under the rules of construction that a statute is not to be construed as changing the common law further than its terms expressly declare, it was held that a negotiable instrument must be an absolute and unconditional promise to pay money or deliver property at a time that will certainly happen. It may be unknown in advance when it will transpire but it must be absolutely certain that it will be sometime. Although it may be in the power of the party to whom the promise is made to render it certain, by his subsequent act, this will not be sufficient. It cannot be such a time as will depend upon his will or his pleasure. Under the statutes a warehouseman is not responsible for wheat destroyed by fire in the absence of negligence, nor is he pledged to redeliver unless the receipt is properly indorsed and all the proper charges paid; it is, therefore, impossible to know, in advance, with absolute certainty, that the warehouseman will ever be required to redeliver the wheat. It is precisely as if the promise were to redeliver upon condition that none of these things allowed as excuses for non-delivery should intervene, as well as all future conditions actually written in the receipt. It does not follow that, because the statute has made bills of lading and warehouse receipts negotiable by indorsement and delivery, that all the consequences of indorsement and delivery of bills and notes before maturity ensue, or are intended to result from such negotiation. *Canadian Bank v. McCrea et al.*, 106 Ill. 281; *Burton v. Curyea*, 40 Ill. 320; *Shaw v. R. R. Co.*, 101 U. S. 557; *Western Union R. R. Co. v. Wagner*, 65 Ill. 197; *Chicago Dock Co. v. Foster*, 48 Ill. 507. See also *Northrop v. First National Bank*, 27 Ill. App. 527, and the cases there cited.

*Same—Same—Suit by assignee.*

A warehouse receipt was duly indorsed to plaintiff, who re-

ceived at the same time a certificate stating that the condition of the property represented by it was good. It subsequently appeared that the property was not in the condition stated in the certificate, which was delivered to the original holder of the receipt. It was *held* under such conditions, that the assignee could maintain an action for this breach, and that, under the statutes of the state, warehouse receipts are made negotiable instruments, not possessing, however, all the qualities of negotiable paper, which furnish full protection to the innocent holder, but are, nevertheless, negotiable to the extent of transferring to the assignee all the interest, rights, and remedies, of the original assignor thereof. A judgment in the suit of the indorsee would be a bar to another action against the defendant. *Sargent v. Central Warehouse Co.*, 15 Ill. App. 553.

*Same—Same—Assignor not liable—Custom.*

In an action, brought by plaintiff against defendant, to recover back the purchase money paid by the former to the latter in the purchase of whiskey, the transfer of which was represented by warehouse receipts, it was *held* that the purchaser could look only to the warehouseman. In this case, it appeared that the defendant offered to prove that it was a custom, well known in the whiskey trade, that the seller of warehouse receipts was never looked to as the responsible party but that sole reliance was placed upon the warehouseman. It was *held* that such custom or usage should have been allowed to have been proved. *Mida v. Geissman*, 17 Ill. App. 207.

*Same—Bona fide holder, protected.*

Plaintiff sold certain grain, represented by warehouse receipts, which were duly transferred to the purchaser, and received his check in payment therefor. The purchaser thereupon attached such warehouse receipts to a draft, drawn upon one in another city, and deposited them to his credit in the defendant bank. The check given by the purchaser was not presented until the next day when payment was refused, in the meantime the purchaser having failed. The plaintiff thereupon sued the bank in trover for the value of the wheat. It was *held* that the bank was a *bona fide* holder of the receipt and hence not liable in

such action. The court stated that, in view of the fact that the sale was for cash it was conditional upon the payment to the plaintiff of the check given for the wheat and, therefore, he could properly demand its return from the purchaser. *Hide & Leather National Bank v. West et al.*, 20 Ill. App. 61.

*Same—Collateral security—Estoppel.*

Where warehouse receipts were pledged by the bailor as collateral security for a loan, it was held that, where there was no evidence to show that the lender knew of any facts impairing the title of the bailor to such goods, such lender will be protected when classed with the general creditors, in case of the insolvency of the bailor. Further, it was shown that part of the goods originally stored had been removed and other goods substituted in their place. This fact not being known to the person holding the receipt as collateral it did not affect the security, although the warehouseman violated the statute and committed a fraud against such party by allowing substitution of goods. Under the above facts, the receipt holder became entitled as against the bailor to an equitable lien on the merchandise, such lien arising, if on no other, at least upon the ground of estoppel. *Hoffman et al. v. Schoyer et al.*, 143 Ill. 598; *Union Trust Co. v. Trumbull*, 137 Ill. 146.

*Same—Same—Legal effect of sale—Burden of proof on plaintiff.*

The pledge of a warehouse receipt as collateral security, to secure the payment of a note, is, in legal effect, a sale to the bank of the property called for by the receipt for a valuable consideration and vests the legal title thereto in the bank. The burden is upon the plaintiff to show that the defendant bank took with notice of fraud in the original purchase. *Hanchett v. Buckley et al.*, 27 Ill. App. 159; *Chicago Dock Co. v. Foster*, 48 Ill. 507; *Jewett v. Cook*, 81 Ill. 266; *O. & M. R. R. Co. v. Kerr*, 49 Ill. 458.

*Same—Action by one holding as collateral security.*

Where a person who held a warehouse receipt as collateral

security brought an action in case against the warehouseman; upon demurrer to the declaration, in which it was alleged that the receipt was fraudulently issued, it was *held* that a person holding warehouse receipts could properly maintain such an action and that it was immaterial whether the loss to the plaintiff, from the wrongful act of the defendant, consisted of his being deprived of his money or the grain. *Low v. Martin*, 18 Ill. 290.

*Same—Warehouseman's obligation upon.*

Persons holding grain receipts have only the obligation of the warehouseman for the proper storage and delivery of their grain, according to the terms of their receipts, or, in case of default, to recover of the warehouseman the damages growing out of a breach of the contract. The giving of the receipts creates no specific or general lien on the property of the warehouseman. *Dole v. Olmstead*, 36 Ill. 150; *Same v. Same*, 41 Ill. 344.

*Same—Fraudulent unless they truly represent the property in store.*

A warehouseman issued receipts, in the name of a bank, to secure the payment of loans made to him by the bank. The statements contained in such receipts, as to the kind of goods which they represented, were false. It was contended that, in view of the fact that the statements were known to the bank to be untrue, the provisions in the warehouse act, in relation to the issuance of false receipts, did not apply. The court *held* that this contention was not correct, that the act included the issuance of any warehouse receipt which was in any wise false or fraudulent and that the receipts are required, by the act, to be the true representatives of the property actually in store and that their issuance is prohibited under any other conditions or circumstances. Further, that this was the purpose of the legislature is manifest from its other provisions which make warehouse receipts transferable in lieu of the property which they represent. *Sykes v. The People*, 127 Ill. 117.

*Same—Goods not in existence when issued.*

Where the evidence showed that a receipt, issued by one

who was not a public warehouseman, represented goods which were not in existence at the time, it was *held* that such receipt was void. It was not, in fact, a warehouse receipt at all within the meaning of the statutes. If any of the goods, which were represented, were in existence, the receipt would simply constitute an acknowledgment, by the person having issued it, that he had received such merchandise. *Montgomery, Ward & Co. v. Union Trust and Savings Bank*, 71 Ill. App. 20.

*Same—Parol evidence excluded.*

In an action upon a warehouse receipt evidence in support of the claim, that it was understood between the parties that the wheat should be stored free of charge for a short time only, will not be received as this would be an attempt to vary the terms of the receipt, which is a contract between the parties, by parol evidence. *Leonard v. Dunton*, 51 Ill. 482.

*Same—Purpose of surrender to warehouseman—Erroneous instruction.*

In an action against a warehouseman, for the value of grain, where the plaintiff was not in the possession of the receipt, the court instructed the jury as follows: "If the jury believe from the evidence that the warehouse receipt in evidence was not held by the plaintiff at the time of the levy of the execution, offered in evidence, but had been surrendered to the warehouseman prior to that time, then the plaintiff is not entitled to any of the property replevied, by reason of his once having held such receipt." It was *held* that this instruction, when applied to the evidence tending to show that the receipt was surrendered for the purpose of securing the delivery of the grain, was clearly erroneous. *Nelson et al. v. McIntyre*, 1 Ill. App. 603.

*Injuries to warehouse employees—When warehouseman not liable—Improper instruction to jury.*

Where it appeared, in an action brought by one who had been employed in a warehouse, against the owners thereof, for personal injuries received while in the performance of his duties, that the plaintiff was injured by reason of the defective condition of a trigger in a trapdoor through which grain was dumped

into the bins in the warehouse. The court instructed the jury that, in this case, it would not be sufficient for the defendants simply to prove that they had purchased proper and safe machinery but that if it appeared by the preponderance of evidence that the same was not kept in a safe condition or that the dump in question was defective and by reason thereof the alleged injury resulted, then the plaintiff is entitled to recover, provided he exercised due care. It was *held* that this instruction was erroneous, for no degree of care on the part of the defendants would exonerate them from liability for injury actually caused by a defect in their machinery. It practically attempts to make them insurers. *Wilson v. Kelly*, 52 Ill. App. 124.

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*Penal sections of warehouse act are embraced in the title thereof, and are valid.*

A warehouseman was indicted under that provision of the warehouse act which declares it to be a crime to issue false or fraudulent warehouse receipts. The contention was made, in his behalf, that this provision of the warehouse law was void for the reason that it was not embraced in the title of the act, that title being "An act to regulate public warehousemen and the warehousing and inspection of grain and to give effect to article 13 of the constitution of the state." It was *held* that the section under consideration was manifestly germane to the purpose of the act as stated in this title, and, therefore, the above contention could not be sustained. It was also contended that this section of the warehouse act was repealed by sections 124 and 125 of the criminal code. The court *held* that the provisions of this section were not repugnant to the warehouse act and, therefore, there was no repeal by implication. *Sykes v. The People*, 127 Ill. 117; *Same v. Same*, 132 Ill. 32.

*Public warehousemen—Statutes requiring license and prescribing rates of storage, constitutional.*

The legislature of Illinois, in 1871, passed an act entitled "An act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to Article 13 of the constitution of the state." Under sections 3 and 4 of this act

the defendant was indicted for the violation thereof, in that he conducted a public warehouse in the city of Chicago without first having procured a license as required by this act. The act further provided a maximum charge which warehousemen, doing business in said state, should be allowed to make. It appeared that the defendant had been doing business as warehouseman for a long period prior to the enactment of said statute. The contention was made in his behalf that the act was unconstitutional and void, in that it deprived him of property without due process of law. The court *held* that, by the terms of the law under consideration, no right of property was taken away or destroyed. That all the property the owners ever had in their possession remained to them untouched by the strong hand of the legislature, that the act must be held to be an honest effort on the part of the legislature to arrest a great and growing evil by the regulation of the charges which warehousemen could demand, and placing them under bond that they could not violate its provisions. *Munn v. Illinois*, 69 Ill. 80, aff'd 94 U. S. 113. See also *People v. Budd*, 117 N. Y. 1, aff'd 143 U. S. 517; *North Dakota ex rel. Stoeser v. Brass*, 2 N. D. 482, aff'd 153 U. S. 391; *People v. Miller*, 82 N. Y. Supp. 582. See *State v. Associated Press*, 159 Mo. 410, in which the authorities are fully reviewed and the doctrine of *Munn v. Illinois* severely criticised and departed from; see also note to *People v. Budd*, in New York decisions, this volume, page 601.

## CHAPTER XIII.

## INDIANA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Classes permit—Record of permit and withdrawal :**

Public warehouses shall be divided into two classes, to be designated as classes "A" and "B," respectively. Any person or incorporated company desiring to keep any such public warehouse shall be entitled to do so upon receiving a permit therefor from the auditor of the county in which such warehouse shall be kept.

Such permit shall be granted upon the written application, signed by the owner or owners of such warehouse, if natural persons, or, if owned by a corporation, by the president and secretary thereof. Every warehouse receiving such permit shall continue, subject to the provisions of this act, until the owner or owners thereof shall file in said auditor's office written notice, signed as aforesaid, that they desire to renounce the character of public warehousemen; and such auditor shall keep a record of such permit and renunciation. Warehousemen not taking out such permit shall not be in any wise affected by the provisions of this act. Homer's Annotated Statutes, 1901, sec. 6525.

**What classes "A" and "B" embrace :**

Public warehouses of class "A" shall embrace all warehouses, elevators, or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved; public warehouses of class "B" shall embrace all other warehouses or places where property of any kind is stored for a consideration. Any corporation, company, individual, or lessee, operating or conducting a public warehouse, shall be deemed a

public warehouseman. Where a permit has been heretofore obtained, or may hereafter be obtained under this act, to keep a public warehouse, such permit shall be so construed as to have included and to include more than one building or room, or parts of buildings or places of storage at the same time: *Provided*, That such places were or are all in the same county in which the permit was or may be issued, and provided that the distinctions between the classes "A" and "B," as stated in this section, have been or shall be preserved by the warehouseman. *Id.* sec. 6526.

**Duty of class "A"—Inspecting—Grading—Storing—Receipt:**

It shall be the duty of every warehouseman of class "A" to receive, for storage, any grain that may be tendered to him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between persons desiring to avail themselves of warehouse facilities. Such grain, in all cases, shall be inspected and graded by a duly authorized inspector, and stored with grain of a similar grade; but if the owner or consignee so request, and the warehouseman consent thereto, his grain may be kept in a bin by itself, apart from that of other owners, which bin shall thereupon be marked and known as a separate bin. If a warehouse receipt be issued for grain so kept separate, it shall state, on its face, that it is in a separate bin. Nothing in this section shall be so construed as to require the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in case where such warehouse is necessarily closed. *Id.* sec. 6527.

**Warehouse receipt for class "A":**

Upon the application of the owner or consignee of grain stored in a public warehouse of class "A" (the same being accompanied with evidence that all transportation or other charges which may be a lien upon such grain, including charges for inspection, have been paid), the warehouseman shall issue, to the person entitled thereto, a warehouse receipt therefor, sub-

ject to the order of the owner or consignee; which receipt shall bear date corresponding with the receipt of the grain into store, and shall state, upon its face, the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store, to be stored with grain of the same grade by inspection, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and the payment of proper charges for storage. All warehouse receipts for grain issued from the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." Nothing in this section shall be so construed as to require any warehouseman or warehouse company to issue a duplicate or substituted receipt, unless sufficient and satisfactory evidence of the loss of the original is produced, and unless good and sufficient security and indemnity against liability on the original receipt shall be given. *Id.* sec. 6528.

#### **Receipt, when cancelled, void :**

Upon delivery of grain from store upon any receipt, such receipt shall be plainly marked across its face with the word "Cancelled" with the name of the person cancelling the same, and it shall thereafter be void, and shall not again be put in circulation, nor shall grain again be delivered twice upon the same receipt. *Id.* sec. 6529.

#### **Receipt only for actual delivery :**

No warehouse receipt shall be issued except upon the actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipt, nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received, nor shall more than one receipt be issued for the same lot of grain, except in cases where receipts for parts of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the

grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder; but such new receipts shall bear the same date as the original, and shall state, on its face, that it is the balance of receipt of the original number; and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it all had been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store; the new receipts shall express on their face that they are parts of other receipts, or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued, as explanatory of the change. All new receipts issued for old ones, cancelled as herein provided, shall bear the same date as those originally issued, as near as may be. *Id.* sec. 6530.

#### **Delivery of property :**

On the return of any warehouse receipt issued by any warehouseman, properly indorsed, and the tender of all proper charges upon the property represented by it, such property shall be immediately deliverable to the holder of such receipt: *Provided*, No warehouseman shall be held in default in delivering, if the property be delivered in the order demanded, or in the order that transportation may be furnished, and as rapidly as due diligence, care, and prudence will justify. *Id.* sec 6531.

#### **Responsibility for loss or damage :**

No public warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same; nor shall he be held liable for damage to grain by heating, if it can be shown that he has exercised proper care in handling and storing the same, and that such heating or damage was the result of causes beyond his control. *Id.* sec. 6532.

**Duty as to grain out of condition :**

In case, however, any warehouseman of class "A" shall discover that any portion of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice (by posting a notice in the most public place, for such a purpose, in the city or town in which such warehouse may be located) of its actual condition, as near as he can ascertain it, and shall state, in such notice, the kind and grade of grain, the bins in which it is stored, the receipts outstanding, upon which such grain shall be delivered, giving the numbers, amounts and dates of each (which receipts shall be those of the oldest dates then in circulation or uncancelled), that the grain represented has not been previously declared or received for as out of condition; or if the grain longest in store has not been received for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, and the amount of it. The enumeration of receipts and identification of grain, so discredited, shall embrace, as near as may be, as great a quantity of grain as is contained in such bins; and such grain shall be delivered upon the return and cancellation of the receipts, and the unreceipted grain upon the request of owner or person in charge thereof. *Id. sec. 6533.*

**Further duty as to such grain—Sale :**

Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and it shall not be mixed with any other grain while in store in such warehouse. Nothing in this section shall be so construed as to permit any warehouseman to deliver any grain stored in a separate bin or by itself, as provided in this act, to any but the owner of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition, as herein provided for, shall not be removed from store by the owner thereof within thirty days from the date of the notice of its being out of condition, it shall be lawful for the warehouseman with whom

the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice by advertisement in a newspaper (daily, if there be such) published in the city or town where such warehouse is located. *Id.* sec. 6534.

**Good faith required :**

It shall not be lawful for any public warehouseman to select different qualities of the same grain for the purpose of storing or delivering the same, nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain, while in his possession or custody, with a view of securing profit to himself or any other person. Nothing in this section, however, shall prevent any warehouseman from moving grain while within his warehouse, for its preservation or safe-keeping. *Id.* sec. 6535.

**Owners and inspectors may examine warehouse :**

All persons owning property, or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property, at all times during ordinary business hours, shall be at full liberty to examine any and all property stored in any public warehouse in this state; and all proper facilities shall be extended to such persons by the warehouseman, his agents or servants, for an examination. All parts of public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or of any authorized inspector of such property. *Id.* sec. 6536.

**Receipts negotiable—Receipts of class “B” :**

Warehouse receipts for property stored in any class of public warehouses, as herein described, shall be negotiable and transferable by the indorsement of the party to whom such receipt may be issued; and such indorsement shall be deemed a valid transfer of the property represented by such receipt and may be either in blank or to the order of another. Every indorsee or transferee of such receipt may, in like manner and with like effect, negotiate and transfer the same, by indorsement, to the order of another, or in blank, or by delivery by a prior indorsement in blank. Every such indorsement shall be deemed to

be a warranty that the indorser has good title and lawful authority to sell the property named in such receipt. No sale of grain in store, which is not evidenced or accompanied by a transfer of the warehouse receipt given therefor, shall be valid as against the *bona fide* holder of such receipt. All warehouse receipts for property stored in public warehouses of class "B" shall distinctly state, on their face, the brand or distinguishing mark on such property. *Id.* sec. 6537.

#### **Fraudulent receipts, or removing property, felony :**

Any warehouseman of any public warehouse, who shall be guilty of issuing any warehouse receipt for any property not actually in store at the time of issuing such receipt; or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in character, either as to date, or as to the quantity, quality or inspected grade of such property; or who shall remove any property from store, except to preserve it from fire or other sudden damage, without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property,—shall be deemed guilty of a crime, and, upon conviction thereof, shall suffer, in addition to any other penalties prescribed by this act, imprisonment in the penitentiary for not less than one and not more than ten years. *Id.* sec. 6538.

#### **Appointment of grain inspectors :**

There shall be appointed, annually by the board of trade or other commercial organization, one or more inspectors of grain and other property, for the county where such board is organized, and in case there be no such organization in any county, then the judge of the circuit court may appoint such inspectors. Every inspector, before entering upon the duties of his office, shall take an oath to faithfully and honestly perform his duty according to law. Where there are two or more such organizations in any city, the one whose members deal most exclusively with grain and produce shall make such appointment, and it shall provide for his compensation, and for that purpose may fix a schedule of fees to be paid by the owners of such property as may be inspected. *Id.* sec. 6539.

**Duty of inspectors—Compensation :**

Such inspector may classify and determine the grade to which any article of property submitted to his inspection belongs; but where there is a board of trade or other commercial organization in such county, it shall have the exclusive authority to fix the grade of property, defining what shall constitute grade numbers one, two, etc., the inspector determining only as to what grade the same belongs. Where there is no such organization in any county, then the grading and rates of compensation for inspection adopted by such organization in the city nearest to the point where such grain or property is inspected, shall govern the inspector in his inspection. *Id.* sec. 6540.

**Elevator or warehouse receipts :**

That all persons, firms or corporations owning and dealing in corn, wheat, oats, rye, barley, or other grain who may desire to sell, transfer, assign, pledge, or hypothecate the same, or any part thereof, by issuing elevator or warehouse receipts or certificates, are hereby required to file with the recorder of deeds, in the county where any such grain is stored, a written declaration setting forth the name and residence of such person, firm or corporation that such person, firm or corporation desires to keep, own or control a warehouse, elevator, crib or other place for the storage and keeping of grain, an accurate description of the place and locality where the same is to be kept, owned, or controlled, and of the elevator, warehouse, crib or other place, the dimensions and quality thereof, and the names of any other persons than the one making the declaration, having any interest in land or structure; such declaration shall be duly acknowledged and filed for record in the same manner as instruments for the conveyance of personal property. *Id.* sec. 6540a.

**May pledge grain—Certificate showing law complied with :**

Any person, firm or corporation owning, keeping or controlling any such elevator, warehouse, crib, or other place for the storage of grain, and who has filed the declaration as provided in section one hereof, may execute and issue bills, certifi-

eates or warehouse receipts, for any grain that may actually be in said elevator, warehouse, crib or other place described in said declaration, or for any part or quantity thereof, and may sell, convey, assign, transfer, pledge or incumber said grain, or any part or quantity thereof. But such bill, certificate or warehouse receipt shall have written or printed on it a statement that the person, firm or corporation issuing it has complied with section one hereof, with the book and page in the recorder's office where the same is recorded, the name and address of the party issuing it, and to whom issued, the location of the premises and elevator, warehouse, crib or other place where the grain is stored, the date of issuance, and the quantity of grain and its kind, and shall be signed by the person, firm or corporation issuing it; and bills, certificates and receipts issued in the manner and form aforesaid shall operate and have the effect to transfer the title to the grain described in them, and vest the same in the holder thereof, and the holders thereof may sell, assign, transfer, or otherwise dispose of the same in like manner without the purchaser, assignee or holder being required to have the same recorded or give notice to protect himself against existing creditors or subsequent purchasers, as required in other cases where property is left in the possession of the vendor. *Id.* sec. 6540b.

#### **Receipts and certificates :**

Every person, firm or corporation making the declaration and issuing receipts and certificates for grain, as herein contemplated, shall keep a regular well-bound book, wherein shall be kept and entered at the date of issuance thereof, full account of each and every receipt or certificate, with the date of issuance, number, name of person to whom issued, the quality and kind of grain covered by such; and such book shall be subject to the inspection and examination of each and every person holding any such receipt or certificate, his agent or attorney.

Any person wrongfully altering, changing, or willfully destroying any such book shall, upon conviction, be fined not exceeding one thousand dollars, and may be imprisoned in the county jail not exceeding one year; and any person, firm or corpora-

tion issuing any receipt or certificate, without entering and preserving in such book the required memoranda shall be fined, upon conviction, not to exceed one hundred dollars for each certificate so issued and be liable for all damages sustained in consequence of such omission. *Id. sec. 6540c.*

#### **Penalty for issuing false certificate :**

Any person, firm or corporation who shall knowingly issue any such receipt or certificate for grain when the grain described is not actually in the elevator, warehouse, crib or other place mentioned therein, or shall knowingly, with intent to defraud, issue a second receipt or certificate for grain, for which, or part of which, any former receipt or receipts, certificate or certificates, are outstanding, uncancelled, and valid and subsisting, shall, beside being liable for all damages caused by such second issue, be deemed guilty of felony, and for each offense be fined not to exceed one thousand dollars, and may be imprisoned in the penitentiary not exceeding five years. *Id. sec. 6540d.*

#### **Penalty for removing grain :**

Any person, firm or corporation owning, possessing or controlling any elevator, warehouse, crib or other place for storing grain as provided in this act, who shall sell or remove, or knowingly permit to be removed therefrom, any grain for which any receipt or certificate has been issued and is outstanding, held by any other person than the person issuing the same, and any person knowingly receiving, or helping to remove the same, shall be deemed guilty of grand larceny and punished as provided by statute, and such grain so removed shall be deemed and regarded as stolen property and may be pursued and recovered or its value recovered by the owner and holder of the said receipt or certificate. *Id. sec. 6540e.*

#### **Who are warehousemen :**

Every person, firm, company, or corporation, receiving cotton, tobacco, pork, grain, corn, rye, oats, wheat, hemp, whiskey, coal, any kind or produce, wares, merchandise, commodity, or any other kind or description of personal property or thing whatever in store, or undertaking to receive or take care of the

same, with or without compensation or reward therefor, shall be deemed and be held a warehouseman. *Id.* sec. 6541.

#### **Receipt for property—Evidence :**

Every warehouseman, receiving anything enumerated in the preceding section, shall, on demand of the owner thereof, or the person from whom he received the same, give a receipt therefor, setting forth the brand, quality, quantity, kind and description thereof, which shall be designated by some mark; which receipt shall be evidence in any action against said warehouseman. *Id.* sec. 6542.

#### **Receipts negotiable :**

All receipts issued by any warehouseman, as provided by this act, shall be negotiable and transferable by indorsement in blank, or by special indorsement, and with like liability as bills of exchange now are, and like remedy thereon. *Id.* sec. 6543.

#### **Receipts given only for property stored :**

No warehouseman, or other person, shall issue any receipt or other voucher for any goods, wares, merchandise, produce, or thing enumerated in section one of this act (sec. 6541) or for any other commodity or thing, to any person, company, or corporation, unless such goods, wares, merchandise, produce, property, commodity, or thing shall have been *bona fide* received into and stored by such warehouseman or other person, and shall be in store and under his control, care, and keeping, at the time of issuing such receipt. *Id.* sec. 6544.

#### **Fraudulent receipts forbidden :**

No warehouseman or other person shall issue any receipt or voucher for any goods, wares, merchandise, produce, commodity, property, or other thing, of any description or character whatever, to any person, company, or corporation, as security for any money loaned, or for other indebtedness or indemnity, unless such goods, wares, merchandise, produce, commodity, property, or other thing, so received for, shall be, at the time of issuing such receipt or voucher, the property, without incumbrance, of said warehouseman, and if incumbered by proper lien, then the character, extent and amount of that lien shall

be fully set forth and explained in the receipt, and shall be actually in store and under control of said warehouseman at the time of giving such receipt or voucher. *Id.* sec. 6545.

#### **No receipt while one outstanding :**

No warehouseman or other person shall issue any receipt or other voucher for any goods, wares, merchandise, produce, or other thing enumerated in section one of this act (sec. 6541), while any former receipt for such goods, wares, merchandise, produce, or thing as aforesaid, or any part thereof, shall be outstanding and uncanceled. *Id.* sec. 6546.

#### **Warehouse receipts—Unlawful issue :**

That it shall be unlawful for any corporation, firm or person, their agents or employees, to issue, sell, pledge, assign, or transfer in this state, any receipt, certificate or other written instrument purporting to be a warehouse receipt, or in the similitude of a warehouse receipt or designed to be understood as a warehouse receipt, for goods, wares or merchandise stored or deposited, or claimed to be stored or deposited, in any warehouse, public or private, or any other state, unless such receipt, certificate or other written instrument shall have been issued by the warehouseman operating such warehouse. *Id.* sec. 6546a.

#### **False receipts :**

It shall be unlawful for any corporation, firm or person, their agents or employees, to issue, sell, pledge, assign or transfer in this state any receipt, certificate or other written instrument for goods, wares or merchandise claimed to be stored or deposited, in any warehouse, public or private, in any other state, knowing that there is no such warehouse located at the place named in such receipt, certificate or other written instrument, or if there be a warehouse at such place, knowing that there are no goods, wares or merchandise stored or deposited therein as specified in such receipt, certificate or other written instrument. *Id.* sec. 6546b.

#### **Description must be definite :**

It shall be unlawful for any corporation, firm, or person, their

agents or employees, to issue, sign, sell, pledge, assign or transfer, in this state, any receipt, certificate or other written instrument evidencing, or purporting to evidence, the sale, pledge, mortgage or bailment of any goods, wares or merchandise stored or deposited, or claimed to be stored or deposited, in any warehouse, public or private, in any other state, unless such receipt, certificate or other written instrument shall plainly designate the number and location of such warehouse, and shall also set forth therein a full, true and complete copy of the receipt issued by the warehouseman operating such warehouse wherein such goods, wares, or merchandise are stored or deposited, or are claimed to be stored or deposited: *Provided*, That the provisions of this section shall not apply to the issue, signing, sale, pledge, assignment or transfer of *bona fide* warehouse receipt issued by the warehouseman operating public or bonded warehouses in other states, according to the laws of the state wherein such warehouses may be located. *Id.* sec. 6546c.

#### **Penalty :**

Every corporation, firm or person, agent or employee, who shall knowingly violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty nor more than one thousand dollars, to which may be added imprisonment in the county jail for any period not exceeding one year. *Id.* sec. 6546d.

#### **Not to sell received property :**

No warehouseman or other person shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control any goods, wares, merchandise, produce, commodity, property or chattel for which a receipt or voucher shall have been given, without the written consent of the person holding and producing such receipt. *Id.* sec. 6547.

#### **Act extends to gauger's receipts :**

The provisions of this act shall extend to gauger's receipts issued for distilled spirits which may be in the bonded warehouses of the distillers in the state of Indiana under the control of the revenue officers of the United States or under any

law of the United States; and such receipts shall be transferable by indorsement as provided in section three of this act. *Id.* sec. 6548.

#### **Penalty for cheating or swindling—Criminal and civil :**

Any warehouseman or person who shall willfully, knowingly, and purposely violate any or the provisions of this act shall be deemed a cheat and swindler, and subject to indictment in a court of competent jurisdiction, and, upon conviction, shall be fined in any sum not exceeding five thousand dollars, and shall be imprisoned in the state prison for any determinate period not exceeding five years. Every person aggrieved by the violation of any of the provisions of this act shall have and maintain an action against the person, company, or corporation violating the same, to recover all damages, immediate, consequent, and legal, which he may have sustained by reason of such violation as aforesaid, whether such person may have been convicted criminally or not. *Id.* sec. 6549.

#### **Receipt as collateral, how sold :**

When any receipt or voucher shall have been issued, as provided by this act, and used or pledged as collateral security for the loan of money, or to indemnify, for any purpose, the bank, person, or corporation to whom the same may be pledged, hypothecated, or transferred, shall have power and authority to sell the same and transfer title thereto, in such manner and on such terms as may be agreed to in writing by the parties at the time of making the pledge. *Id.* sec. 6550.

#### **Warehouses—Crimes against—Burglary :**

Whoever, in the night-time, breaks and enters into any dwelling house, kitchen, smoke-house, out-house, shop, office, store-house, ware-house, mill, distillery, pottery, factory, barn or stable, school-house, church, meeting-house, or building used for the purpose of religious worship, boat, wharf-boat, or other water-craft, car-factory, freight-house, station-house, depot, or railroad car, with intent to commit a felony, is guilty of burglary and, upon conviction thereof, shall be imprisoned in the state prison not more than fourteen years nor less than two

years, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. *Id.* sec. 1929.

**Entering house, etc., to commit felony :**

Whoever, in the day-time or night-time, enters any dwelling-house, kitchen, smoke-house, out-house, shop, office, store-house, ware-house, mill, distillery, pottery, factory, barn, stable, school-house, church, meeting-house, or building used for the purpose of religious worship, boat, wharf-boat, or other water-craft, car-factory, freight-house, station-house, depot, or railroad car, and attempts to commit a felony, shall be imprisoned in the state prison not more than fourteen years nor less than two years, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. *Id.* sec. 1930.

**House breaking in day-time to steal :**

Whoever, in the day-time, breaks and enters into any dwelling-house, kitchen, smoke-house, out-house, shop, office, store-house, ware-house, mill, distillery, pottery, factory, barn, stable, school-house, church, meeting-house, or building used for the purpose of religious worship, water-craft, car-factory, freight-house, station-house, depot, or railroad car, with intent to commit the crime of larceny, shall be imprisoned in the county jail not more than six months nor less than ten days, and fined not exceeding two hundred dollars. *Id.* sec. 1931.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—What constitutes, contract of.*

A receipt drawn by a warehouseman for a certain quantity of wheat “received in store subject to our charges. Fire at owner’s risk” constitutes a contract of bailment. *Drudge v. Leiter et al.*, 18 Ind. App. 694.

*Same—Injury.*

In an ordinary case of bailment, uncontrolled by special stipulation, and in the absence of negligence or misconduct by the bailee, an injury to the property bailed falls on the bailor. *Conwell v. Smith*, 8 Ind. 530.

*Same—Destroyed by accident.*

Where property in the custody of a bailee is destroyed accidentally, without any fault on his part, the bailee is not liable. *Drudge v. Leiter et al.*, 18 Ind. App. 694.

*Bailment and sale.*

Where it appeared from the evidence that wheat which had been delivered to dealers had been placed in railroad cars for shipment and not stored in warehouse, and where they retain it for the purpose of obtaining a better price therefor, it was held that this constituted a sale of the wheat and not a bailment, and, in event of destruction by fire, the dealers were liable for the unpaid price thereof. *Woodward et al. v. Boone et al.*, 126 Ind. 122.

*Same—Agreement to deliver flour and bran for wheat deposited.*

Defendants were dealers in grain, conducting a warehouse and flour mill, and the plaintiff agreed to furnish wheat to them, for which the defendants were to deliver, on request, a designated number of pounds of flour and bran for each bushel of wheat delivered. The flour and bran were to remain in the possession of the defendants subject to delivery on demand of the plaintiff. Before the delivery of all of the flour and bran

to the plaintiff, the mill and warehouse were burned without any negligence on the part of the defendants. Under the above facts, it was *held* that it was essentially a contract of sale, not a bailment, and that the defendants were, therefore, liable for the value of the flour and bran undelivered. *Woodward et al. v. Semans et al.*, 125 Ind. 330.

*Same—Commingling of grain.*

The plaintiff delivered, to the defendant warehouseman, a large quantity of grain and took a receipt therefor in which it was stated that the grain had been received to be stored free for thirty days, after which time there would be a certain charge each month per bushel. The receipt further stated that the defendants agreed to pay the market price for such grain at any time between the date of the issuance thereof and nearly a year thereafter, and that the grain was held subject to owner's risk of loss by fire or heating. The evidence also showed that the defendants' warehouse and most of the contents had been destroyed by fire without any fault or negligence on their part. After the fire the defendants had some grain which was not destroyed and which they distributed, *pro rata*, among their depositors to all those who would accept, the plaintiffs declining to do so. The court stated as conclusions of law, first, that the title to the grain remained in the plaintiffs and that the defendants were liable as bailees; second, that the defendants were not liable to the plaintiff for the value of such grain nor for damages resulting from its destruction; third, that the law is with the defendants and that the plaintiff should take nothing by his suit. It was *held* on appeal that the conclusions of law were correct, that the contract was one of bailment and not of sale and therefore the judgment given for the defendant was affirmed. *McGrew v. Thayer et al.*, 24 Ind. App. 578.

**B.**

*Warehouseman—Manufacturing company cannot act as.*

A corporation organized under the laws for the incorporation of manufacturing and mining companies, for the manufacture and sale of nails and other products of steel and iron, is not authorized to engage in the business of a public or private ware-

houseman, or to issue warehouse receipts. *Franklin Nat. Bank et al. v. Whitehead et al.*, 149 Ind. 560.

*Same—Same—Statute construed.*

A manufacturing corporation not empowered to do the business of a public warehouseman cannot be authorized to do so by the county auditor upon petition, under sec. 8704, Burn's R. S. 1894, providing that any person or incorporated company desiring to keep a public warehouse shall be entitled to do so upon receiving a permit therefor from the county auditor of the county in which such warehouse shall be kept. *Id.*

*Same—Same—Creditors bound to know powers of corporation.*

Creditors of a corporation organized under the laws for the incorporation of manufacturing and mining companies are bound to know that such corporation has no power to carry on either a public or private warehouse or issue warehouse receipts. *Id.*

*Same—Same—Contract ultra vires—Void contracts.*

The doctrine, "that when a corporation enters into a contract merely beyond its powers, which if made by a private person would have been binding upon him, and such contract has been performed by the other party thereto, the corporation will not be permitted to deny its power to make such contract," does not apply to contracts that are forbidden by statute, or are contrary to public policy. *Id.*

*Ordinary care.*

Warehousemen and wharfingers are not responsible for all goods intrusted to their care and not lost through the act of God or public enemy; but are only responsible for ordinary care and diligence. *Cox et al. v. O'Riley and Another*, 4 Ind. 368; *Cincinnati & Chicago A. L. R. R. Co. v. McCool*, 26 Ind. 140.

*Conversion—Demand and refusal.*

Where the bailor demands the property intrusted to his bailee and pays, or makes a valid tender to pay, the storage charges due to date, if the warehouseman refuse to deliver, this constitutes a conversion. *Pribble v. Kent*, 10 Ind. 325.

*Same—Action for.*

Where a warehouseman sold wheat on deposit and appropriated the money to his own use, an action against such warehouseman, waiving the conversion and seeking a recovery upon an implied contract, must be for the price received for the wheat, and not for the value of the converted wheat. *Drudge v. Leiter et al.*, 18 Ind. App. 694.

*Same—Plaintiff must be owner or entitled to possession.*

A person cannot maintain an action for conversion where he neither owns nor is entitled to possession of the property alleged to have been converted. *Baker v. Brown*, 17 Ind. App. 422.

*Same—Pleadings—Sufficiency of complaint.*

In an action against a warehouseman for the conversion of certain corn deposited with him, the complaint should allege that prior to the commencement of the action defendant did not have a sufficient quantity of corn of the kind and quality deposited with him with which to meet the demand by plaintiff; that a demand was made; that storage charges or expenses were tendered, or that storage charges had not attached. *Baker v. Born*, 17 Ind. App. 422.

*Same—Same.*

An allegation in a complaint in an action against a warehouseman for conversion of a quantity of corn deposited with him, that on and before a specified date defendant had no corn in his warehouse or under his control, of the quality of the plaintiff's corn deposited prior to a specified earlier date, but had sold such corn, is not equivalent to an allegation that on a certain day the defendant did not have in his warehouse sufficient corn of the kind and quality deposited by plaintiff. *Id.*

**H.***Sale for storage charges without notice—Conversion.*

Sale for storage charges without notice to the owner constitutes a conversion of the property. *Jordan v. Shireman*, 28 Ind. 136.

*Lien for charges.*

The bailor of goods, deposited in a warehouse, retains the property in the goods, and the warehouseman has a lien thereon for his charges. *Pribble v. Kent and Another*, 10 Ind. 325.

**I.***Commingling of grain—Tenants in common—Destruction by fire—Liability of warehouseman.*

Owners of wheat deposited with a warehouseman engaged in receiving grain in store and mingling same in common receptacle and selling and shipping the grain so stored, are owners as tenants in common of the entire quantity of the grain so commingled, and a depositor of grain who has so deposited a certain quantity is an owner of an undivided portion of the whole amount, not only while his grain is actually present in the common store, but his title as tenant in common will continue as long as any grain so deposited by any of the depositors remains in store, unless withdrawn or transferred by him. If at any time the whole mass is less than the aggregate deposits, then each depositor owns such proportion of the grain in store as his deposit bears to the aggregate of all the deposits; and if the warehouse and contents be destroyed by fire, without fault of the warehouseman, at a time when there is not a sufficient amount of grain in the warehouse to satisfy the demands of all depositors, by reason of sales made thereof by the warehouseman, a depositor can recover for the value of the grain deposited by him, less his proportionate share of the aggregate amount on deposit at the time of the fire. *Drudge v. Leiter et al.*, 18 Ind. App. 694; *Rice et al. v. Nixon*, 97 Ind. 97; *Schindler et al. v. Westover et al.*, 99 Ind. 396.

*Same—Sale—Innocent purchaser protected.*

Where grain is mixed in a common mass in a warehouse, with grain belonging to the owner of the warehouse and the warehouseman is regularly selling grain to purchasers from such common mass, such depositor cannot set up his title to the grain against that of an innocent purchaser. *Preston et al. v. Witherspoon et al.*, 109 Ind. 457.

## M.

*Pledge—Receipts of private warehouseman against his own goods—Creditors protected—Bankruptcy.*

Dealers in apples and other produce issued a receipt representing their own property stored in their own warehouse and pledged the same to secure the payment of a loan. Subsequently, they were adjudged bankrupts, and the assignee took possession of and sold all of their property, including the apples represented by the pledged receipt. The pledgee, a national bank, brought action, asking that a lien, on the fund arising from the sale of the apples, be declared in its favor. It appeared from the evidence that the defendants had never been engaged legally in the business of warehousemen, and, on appeal, it was held that the receipt which the bank held was not a warehouse receipt within the meaning of the statute, and that the bank must stand as a common, instead of a preferred, creditor of the bankrupts. *Adams v. Merchants' National Bank of Indianapolis*, 2 Fed. Rep. 174.

## N.

*Cold storage—Injury by deleterious odors—Contract to keep the goods therein—Breach of.*

The defendant, a warehouseman, was sued by the plaintiff for damage to a large quantity of butter which was stored with the former in the cold storage rooms in his warehouse. The complaint alleged that owing to the fact that the butter had become impregnated with deleterious odors and flavors, that it was greatly diminished in value. It being shown on the trial that the butter had been so injured, judgment was given for the plaintiff. *Holt Ice & C. S. Co. v. Arthur Jordan Co.*, 25 Ind. App. 314.

*Loss by accident—Negligence must be shown.*

Where goods intrusted to a warehouseman are accidentally destroyed, there being no negligence shown on his part, he is not liable for their loss. *Drudge v. Leiter et al.*, 18 Ind. App. 694.

*Evidence—Burden of proof—Prima facie case—Negligence.*

In an action against a warehouseman for the loss of butter

stored with him in his cold storage department, the court instructed the jury, in effect, that the general rule was that the burden of proof was on the plaintiff to prove negligence, but that when the bailor had proved delivery to the warehouseman and the return of the butter in a damaged condition, that the plaintiff had made out a *prima facie* case and that the burden then shifted to the warehouseman to account for the injury in some manner consistent with the exercise of ordinary care on his part. It was *held* that this instruction was substantially correct and the case was affirmed on appeal, the court observing, however, that, strictly speaking, there was no shifting of the burden of proof and that it remained upon the plaintiff throughout. That it might be true that the burden of the proceeding did shift; that when the bailor had shown a delivery in good condition and a failure to deliver on demand or a delivery in a damaged condition, the *onus* was upon the defendant to prove that the injury was caused without his fault, the plaintiff having made out a *prima facie* case against the warehouseman. *Holt Ice & C. S. Co. v. Arthur Jordan Co.*, 25 Ind. App. 314.

*Same—Best evidence to prove condition of eggs.*

The best evidence to prove the condition of eggs alleged to have been injured while in cold storage is the testimony of the candler who examined them. An unsigned memorandum made at the time by another person and transcribed by a bookkeeper in the employ of the plaintiff does not constitute the best evidence as to the condition of the eggs. *Adams et al. v. Sullivan*, 100 Ind. 8.

0.

*Measure of damages—Value on date of demand.*

Where the owner of goods stored with a warehouseman demands their return after paying charges and is met with a refusal, the measure of damages is their value at the time of demand and refusal. *Pribble v. Kent*, 10 Ind. 325; *Stevens v. Low*, 2 Hill, 132.

*Same—Place of injury—Average price.*

In an action for the recovery of the value of eggs injured while

being in cold storage, the court instructed the jury as follows: "The plaintiff is, however, entitled to recover the highest market price he could have obtained, at the time of the injury, for the goods, had the defendants fully performed their duty and properly preserved the goods during the time they were bound under their contract to keep them in storage." It was *held* that, in spite of the obscurity of the phraseology of this instruction, it was erroneous, in so far as it stated to the jury that, in event of a finding for the plaintiff, the eggs should have been estimated at the highest market value which the plaintiff could have obtained for them, whether by shipment or otherwise, at the time they were injured. The jury ought to have been told that, in assessing the damages, the eggs should have been estimated according to the market value in the place where they were injured; *further*, where the market is fluctuating and the prices at the time of injury were indefinite, the average range of price about the time affords the proper standard of the market value. *Adams et al. v. Sullivan*, 100 Ind. 8.

#### P.

##### *Insurable interest—Grain commingled.*

It appeared that the plaintiffs, commission merchants, engaged in buying and selling grain, in connection with their business owned and conducted a grain elevator in the usual manner. Those who took receipts from the plaintiffs knew that their grain could never be distinguished from the mass with which it was mingled. The plaintiffs insured in their own name, with the defendant, the grain stored to the full value thereof. In an action for the recovery of the amount of the policy, it was *held* that the plaintiffs had an insurable interest therein and that the defendant was liable to them for the amount of the loss. *Baxter v. Hartford Fire Ins. Co.*, 12 Fed. Rep. 481.

#### Q.

##### *Warehouse receipt—Representations.*

Warehouse receipts represent as true, two very essential things: That the warehouseman received the property mentioned in the receipts, as warehouseman, and that it will be delivered only on the return of the certificate, properly indorsed.

If the warehouseman allows the goods, represented by the receipts, to be withdrawn without the knowledge of the person, who had relied upon the representations in the receipts, he must bear the loss. *Babcock et al. v. Peoples' Savings Bank*, 118 Ind. 212.

*Same—Contract.*

A warehouse receipt is a contract of bailment and parol evidence is not receivable to vary its terms. *Toner et al. v. Citizens' State National Bank*, 25 Ind. App. 29.

*Same—General rule—A contract—Parol evidence—Custom.*

As a general rule, a warehouse receipt is not a contract and parol evidence may be admitted touching its subject-matter, while the rule in regard to contracts generally is that such evidence is not admissible. A receipt, however, may be so drawn as to constitute a contract, and in the interpretations or constructions of a contract established customs may be considered. *Pribble v. Kent*, 10 Ind. 325.

*Same—Construction—Commercial usage.*

A receipt given by a warehouseman for wheat received may be construed by adopting the meaning of its own terms as explained by commercial usage. *Drudge v. Leiter et al.*, 18 Ind. App. 694.

*Same—Mining and manufacturing company cannot issue.*

A corporation organized under the mining and manufacturing laws is not authorized to engage in the warehouse business or to issue warehouse receipts. *Franklin National Bank et al. v. Whitehead et al.*, 149 Ind. 560.

*Same—Issued to secure warehouseman's own debt—Knowledge—Public and private warehouseman.*

A *public* warehouseman has no power to issue warehouse receipts upon his own property in his possession, and deliver the same as a pledge to secure an indebtedness. And parties dealing with a public warehouseman are *held* to know that he has no such power. If a private warehouseman has such power

it is by virtue of section 8724, Burn's R. S. 1894. *National Bank et al. v. Whitehead et al.*, 149 Ind. 560.

*Same—Same—Not a warehouse receipt.*

Where a debtor who is not a warehouseman issues a receipt purporting to be a warehouse receipt, on property in his possession and owned by him, for the sole purpose of securing a creditor, the same is not in any sense a warehouse receipt. *Id.*

*Same—Negotiability—Private warehouseman.*

Receipts issued by a private warehouseman against his own property are not warehouse receipts within the meaning of the act of March 9, 1875. *Adams v. Merchants' National Bank*, 2 Fed. Rep. 174.

*Same—As collateral security—Without indorsement—Pledgee takes subject to equities.*

The plaintiff took a warehouse receipt issued by the defendant warehouseman as security for the payment of indebtedness due the warehouseman from the person to whom the receipt was issued. The receipt was not indorsed to the plaintiff but was simply delivered to him. Default being made in the payment of the indebtedness, the plaintiff instituted an action against the warehouseman for the recovery of the property represented by the receipt. The person to whom the receipt was issued was made a party defendant to the suit and he defaulted. The defendant warehouseman offered evidence to show that the person to whom the receipt was issued was indebted to him and in his motion for a new trial claimed that the damages were excessive and that he should have been given credit for this sum. It was held on appeal that this was correct, that the plaintiff had taken the receipt without indorsement and that therefore the claim of the defendant warehouseman against the person to whom the receipt was issued was valid. The case was therefore reversed and remanded. *Toner et al. v. Citizens' State National Bank*, 25 Ind. App. 29.

*Same—Delivery of goods without surrender of receipt—Warehouseman liable—Bona fide holder protected.*

The plaintiff, in good faith, loaned to a commission merchant

\$4,000, and accepted as security therefor a warehouse receipt issued by the defendant to the commission merchant, in which it was stated that the flour represented by the receipt was deliverable only upon the return thereof, properly indorsed, and on payment of charges and insurance. Subsequently, and without plaintiff's knowledge, defendant allowed the commission merchant to remove the flour represented by the receipt. The court *held* that this constituted a conversion for which the defendant was liable to the plaintiff. *Babcock et al. v. Peoples' Savings Bank*, 118 Ind. 212.

## R.

### *Bill of lading—Parol evidence.*

A bill of lading, in so far as it is a receipt, may be explained, varied or even contradicted by parol evidence; but as a contract, expressing the terms and conditions upon which the property is to be transported, it is to be regarded as merging all prior and contemporaneous agreements of the parties, and, in the absence of fraud, concealment or mistake, its terms or legal import, when free from ambiguity, cannot be explained or added to by parol. *Louisville, E. & St. L. R. R. Co. v. Wilson et al.*, 119 Ind. 352; *Indianapolis & C. R. R. Co. v. Remmy*, 13 Ind. 518; *Snow v. Indiana, etc., R. W. Co.*, 109 Ind. 422.

## CHAPTER XIV.

**INDIAN TERRITORY.**

## LAWS PERTAINING TO WAREHOUSEMEN.

If any carrier or other bailee shall embezzle, or convert to his own use, or make way with or secrete with intent to embezzle, or convert to his own use, any money, goods, rights in action, property, effects or valuable security, which shall have come to his possession, or have been delivered to him, or placed under his care or custody, such bailee, although he shall not break any trunk, package, box or other thing in which he received them, shall be deemed guilty of larceny, and on conviction shall be punished as in cases of larceny. An. Stat. 1899, sec.983.

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NOTE. It seems that there are in Indian Territory no decisions affecting warehousemen.

## CHAPTER XV.

## IOWA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Elevator or warehouse certificates:**

All persons, firms or corporations engaged in owning or dealing in grains, seeds or other farm products; the slaughtering of cattle, sheep and hogs, and dealing in the various products therefrom; the buying or selling of butter, eggs, cheese, dressed poultry or other commodities; who own or control the buildings wherein any such business is conducted, or such commodities stored, may issue elevator or warehouse certificates for any of such commodities actually on hand and in store, the property of the person, firm or corporation issuing such certificates and may by such method sell, assign, transfer, pledge or incumber such commodity to the amount described in such certificate. Such certificates shall contain the name and address of the person, firm or corporation issuing them, and the name and address of the party to whom issued, the location of the elevator, warehouse, building or other place where the commodity therein described is stored, the date of the issuance of such certificate, the quantity of each commodity therein mentioned, the brands or marks of identification thereon, if any, and be signed by the person or firm issuing the same, unless issued by a corporation, in which case they shall be signed by such corporation by its secretary or business manager if it has such manager other than its secretary. Code of Ia. 1897, sec. 3122.

**Declaration :**

Before any such person, firm or corporation is authorized to issue such elevator or warehouse certificates, he or it must file in the office of the recorder of deeds, in the county where any such elevator, warehouse or other building is situated, a written declaration, giving the name and place of residence or location

of such person, firm or corporation, that he or it designs keeping or controlling an elevator, warehouse, crib or other place for the sale and storage of commodities mentioned in the preceding section, an accurate description of the elevator, warehouse, crib or other building to be kept or controlled and where the same is or is to be located, the name or names of any person, other than the one making such declarations, who has any interest in such elevator, warehouse or other building, or in the land on which it is situated, such declaration to be signed and acknowledged by the party making the same before some officer authorized to take acknowledgments of instruments, and recorded in the chattel mortgage record, the party making such declaration, to be treated as the vendor in indexing such declaration, and the public as vendee. *Id.* sec. 3123.

#### **Effect of certificate—Assignment :**

Each certificate issued by any person, firm or corporation shall have printed on the back thereof a statement that the party issuing it has complied with the requirements of the preceding section, giving the book, page and name of the county where the record of such declaration may be found; and, when such certificate is so issued and delivered, it shall have the effect of transferring to the holder thereof the title to the commodities therein described or enumerated, and shall be assignable by written indorsement thereon, signed by the lawful holder thereof, which shall transfer the title of commodities therein enumerated, and be presumptive evidence of ownership in such holder. No record or other notice shall be necessary to protect the rights of the holder of the certificate as against subsequent purchasers of the property. *Id.* sec. 3124.

#### **Registration of certificates and transfers :**

All certificates given under the provisions of this chapter shall be registered by the party issuing them in a book kept for that purpose, showing the date thereof, the number of each, the name of the party to whom issued, the quantities and kinds of commodities enumerated therein, and the brands or other distinguishing marks thereon, if any, which book shall be open to the inspection of any person holding any of the certificates

that may be outstanding and in force, or his agent or attorney; and when any commodity enumerated in any such certificate is delivered to the holder thereof, or it in any other manner becomes inoperative, the fact and date of such delivery or other termination of such liability shall be entered in such register in connection with the original entry of the issuance thereof. *Id.* sec. 3125.

#### **Property subject to certificate :**

No person, firm or corporation shall issue any elevator or warehouse certificate for any of the commodities enumerated in this chapter unless such property is actually in the elevator or warehouse or other building mentioned therein as being the place where such commodity is stored, and it shall remain there until otherwise ordered by the lawful holder of such certificate, subject to the conditions of the contract between the warehouseman and the person to whom such certificate was issued, or his assignee, as to the time of its remaining in store; and no second certificate shall be issued for the same property or any part thereof while the first is outstanding and in force, nor shall any such commodities be by the warehouseman sold, encumbered, shipped, transferred or removed from the elevator, warehouse or other building where the same was stored at the time such certificate was issued, without the written consent of the holder thereof. *Id.* sec. 3126.

#### **Section 2171 of the Code of 1873 (containing provisions similar to above) construed :**

A warehouse receipt issued to the proprietor of the warehouse against his own goods solely for the purpose of using the same as collateral security, *held* invalid within the meaning of section 2171 of the Code which contains provisions similar to the above. *Sexton & Abbott v. Graham et al.*, 53 Ia. 181.

#### **Damages :**

Any one injured by the violation of any of the provisions of this chapter may recover his actual damages sustained on account thereof, and if willfully done, in addition thereto, exemplary damages in any sum not exceeding double the actual dam-

ages, which actual damages shall be found and returned by special verdict. *Id.* sec. 3127.

**Section 2175 of the Code of 1873 (containing provisions similar to above) construed :**

In order to hold a warehouseman liable for exemplary damages under the above section, it must be shown that he was guilty of a willful departure from his duties as a warehouseman and a mere failure to observe all the legal requirements in attempting to enforce his right of sale is not sufficient. *Jeffries v. Snyder*, 110 Ia. 359.

**Penalties :**

Any person who shall willfully alter or destroy any register or certificates provided for in this chapter, or issue any receipt or certificate without entering and preserving in such book, the registered memorandum; or who shall knowingly issue any certificate herein provided for when the commodity or commodities therein enumerated are not in fact in the building or buildings it is certified they are in; or shall, with intent to defraud, issue a second or other certificate for any such commodity, for which, or for any part of which, a former valid certificate is outstanding and in force; or shall, while any valid certificate for any part of the commodities mentioned in this chapter is outstanding and in force, sell, incumber, ship, transfer, or remove from the elevator, warehouse or building where the same is stored, any such certified property, or knowingly permit the same to be done, without the written consent of the holder of such certificate; or if any person knowingly receives any such property or helps to remove the same, he shall, upon conviction, be punished by fine not exceeding ten thousand dollars, or by imprisonment in the penitentiary not exceeding five years. *Id.* sec. 3128.

**Seetion 2171, Code 1873 (containing similar provisions to above) construed :**

Weighmasters' tickets *held* not warehouse receipts in meaning of similar provisions to above. *Cathcart v. Snow*, 64 Ia. 584.

**Certificates as evidence—Lien :**

All warehouse certificates or other evidences of the deposit of property, issued by any warehouseman, wharfinger or other person engaged in storing property for others, shall be in the hands of the holder thereof presumptive evidence that the title to the property therein described is in the holder of such instrument. Such property shall remain in store until otherwise ordered by the holder of such certificate or other evidence of deposit, and shall not be removed by such warehouseman, or knowingly suffered to pass from his control, without the written consent of the depositor or his assignee, and shall be subject to all just charges for storage thereof; and such warehouseman or other depositary shall have a lien thereon for such charges, and may retain possession thereof until they are paid. *Id.* sec. 3129.

**Unclaimed property—Lien for charges :**

Property transported by, or stored or left with, any forwarding and commission merchant, express company, carrier or bailee for hire shall be subject to a lien for the lawful charges thereon for the transportation and storage thereof, or charges and services thereon or in connection therewith; and if any such property shall remain in the possession, unclaimed, of any of the persons named in this section for three months, with the just charges thereon due and unpaid, such person shall first give notice of the amount of the charges thereon to the owner or consignee thereof, if his whereabouts is known, if not, he shall go before the nearest justice of the peace, and make an affidavit, stating the time and place where such property was received, the marks or brands by which the same is designated, if any, and, if not, then such other description as may best answer the purpose of indicating what the property is, and the probable value of the same, and to whom consigned, also the charges paid thereon, accompanied by the original receipt for such charges and by the bill of lading, also any other charges due and unpaid, and whether the whereabouts of the owner or consignee is known to the affiant, and whether such notice was first given to him as herein provided; which affidavit shall be filed by the justice for the inspection of any one interested therein, and an entry made

in the entry book of the substance of the affidavit, and a statement when, where and by whom made. *Id.* sec. 3130.

**Section 26, General Statutes, chapter 107 of Laws 1873  
(containing provisions similar to above), construed :**

Under similar provision to the above, it was *held* that the noticee to the owner must be given before the sale and that if this be done the statute is complied with. It is not necessary that in every case the notice be given to the owner before the expiration of three months from the receipt of the goods. *Jef-fries v. Snyder*, 110 Ia. 359.

**Sale—Notice :**

If the property remains unclaimed and the charges unpaid, the person in possession, if the probable value does not exceed one hundred dollars, shall advertise the same for fourteen days, by posting notices in five of the most public places in the city or locality where said property is held, giving such description as will indicate what is to be sold; if the goods exceed the probable value of one hundred dollars, the length of notice shall be four weeks, and there shall be a publication thereof for the same length of time in some newspaper of general circulation in the locality where the property is held, if there be one, and, if not, then in the next nearest newspaper published in that neighborhood, at the end of which period, if the property is still unclaimed or charges unpaid, it may be sold by him at public auction, between the hours of ten o'clock A. M. and four o'clock P. M., for the highest price the same will bring, which sale may be continued from day to day, by public announcement to that effect at the time of the adjournment, until all the property is sold; and from the proceeds thereof all charges, costs and expenses of the sale shall be paid, which sales shall be conducted after the manner of sheriffs' sales, and like costs taxed for the services. *Id.* sec. 3131.

**Section 2179 of the Code of 1873 (containing provisions similar to above) construed :**

Whether or not the value of the goods is less or more than one hundred dollars, and whether or not the notices were posted

in such places as to conform to the requirements of similar provisions to the above, *held* proper questions for the jury. *Jeffries v. Snyder*, 110 Ia. 359.

### **Perishable property :**

Fruit, fresh fish, oysters, game and other perishable property thus held shall be retained twenty-four hours, and, if not claimed within that time and charges paid, after the proper affidavit is made as required by the second preceding section, may be sold either at public or private sale, in the discretion of the party holding the same, for the highest price that the same will bring, and the proceeds of the sale disposed of as provided in the last preceding section. In either case, if the owner or consignee of said unclaimed property resides in the same city, town or locality in which the same is held, and is known to the agent or party having the same in charge, then personal notice shall be given to him in writing that the goods are held subject to his order on payment of charges, and that, unless he pays the same and removes the property, it will be sold as provided by law. *Id.* sec. 3132.

### **Disposition of proceeds :**

After the charges on the property and the costs of sale have been taken out of the proceeds, the seller shall deposit the excess with the county treasurer of the county where the goods were sold, subject to the order of the owner, take a receipt therefor, and deposit the same with the county auditor. At the same time he shall also file a verified schedule of the property with the treasurer, giving the name of the consignee or owner, if known, of each piece of property sold, the sum realized from the sale of each separate package, describing the same, together with a copy of the advertisement hereinbefore provided for, and a full statement of the receipts of the sale, and the amount disbursed to pay charges and expenses of sale, which shall all be filed and preserved in the treasurer's office for the inspection of any one interested in the same. *Id.* see. 3132.

### **Duty of treasurer—Refunding to owner :**

If the money remains in the hands of the treasurer unclaimed,

he shall place the same to the credit of the county in his next settlement, and if it so remains unclaimed for one year, it shall be paid to the school fund; but any claimant therefor may any time within ten years appear before the board of supervisors and establish his right to the same by competent legal evidence, in which case the original sum deposited shall be paid him out of the county treasury. *Id.* sec. 3133.

**False warehouse receipts—Penalty:**

If any person sell, transfer or dispose of any receipt or voucher, given or purporting to have been given by any person for property in store, knowing that such person has not in his possession such property, or any part thereof, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding five years. *Id.* sec. 5068.

**Section 4088 of the Code of 1873 (containing provisions similar to above) construed :**

Where a warehouseman shipped wheat out of the state, without the return of the warehouse receipt, *held*, under section 4088 of the Code of 1873, that he was criminally liable, that such statute was for the protection of the holder of the receipt and also third persons. Evidence tending to show the shipment to have been made with consent of owner *held* inadmissible. *State v. Stevenson*, 52 Ia. 701.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Bailee may maintain action for loss or damage.*

A bailee, although he has not the title, has, in addition to the possession of the chattel, a special limited or qualified property therein, which gives him a right of action against any one, whether the bailor or a stranger, interfering with his possession or doing damage to the chattel. *Allen v. Barrett & Carlton et al.*, 100 Ia. 16.

*Bailment and sale.*

A warehouseman received wheat with the understanding that when the depositor got ready to sell the former would give the highest market price therefor or an equal amount of wheat of the same grade and quality. It was shown that it was a custom among warehousemen, when they received wheat to ship it for sale, whenever they saw fit, retaining a sample. It was held that this constituted a sale and not a bailment. *Johnston v. Browne et al.*, 37 Ia. 200; *Barnes Bros. v. McCrea & Co. et al.*, 75 Ia. 267.

*Same—Commingling of grain.*

Where a receipt, given for grain received in storage, provided in express terms that the grain might be stored with other grain of the same kind and grade, and it was shown that the warehouseman was in the habit of issuing such receipts to his other depositors, and it was also shown to be his known practice to purchase grain on his own account and mingle it with the grain of his depositors and that he was continually making sales from the grain stored, so that in all likelihood the whole mass was changed during a period of a few months, it was held that the transaction was one of bailment and not of sale and that the depositors and warehouseman became tenants in common. *Sexton & Abbott v. Graham et al.*, 53 Ia. 181; *Nelson v. Brown, Doty & Co.*, 44 Ia. 455; *Same v. Same*, 53 Ia. 555; *Arthur v. Chicago, R. I. & Pac. Ry.*, 61 Ia. 648. But see *Barner Bros. v. McCrea et al.*, 75 Ia. 267.

*Same—Contract construed.*

Plaintiff delivered to defendants a large quantity of corn and received therefor a receipt in the following words: "Received in store, of C. R. Marks, one load of corn, subject to storage. Number of bushels, 2,920." During the night after the day of delivery, the corn and elevator were burned. An action was brought to recover the value of the corn on the theory that the defendants purchased the same. It was *held* that the contract was one of bailment and, therefore, the defendants were not liable. *Marks v. The Cass County Mill & Elevator Co.*, 43 Ia. 146; *Arthur v. Chicago, Rock Island & Pacific Ry. Co.*, 61 Ia. 648.

*Same—Same—Effect of statement in receipt "bought of" etc., "at owner's risk as to fire."*

In an action against a warehouseman in which it was alleged that he was responsible for grain which had been destroyed by fire while stored with him, on the ground that there had been a sale thereof, the evidence showed as follows: That the grain in question had not been mixed in a common bin; that there had been no demand made by the plaintiff for the return of the grain but that the defendant by his agent had, a short time before the fire, made an offer to the plaintiff to purchase the grain. It was *held* that the transaction was not a sale but a bailment, and while it is true that the word "bought" in the receipt unexplained, would import a sale, but that when taken in connection with the expression "at owner's risk," etc., and in the light of certain parol evidence which was received to explain the word, that it clearly appears that a sale was not contemplated by the parties. *Irons v. Kentner*, 51 Ia. 88.

*Same—Same—Continues a bailment while stored—Mixing with other grain not conversion.*

A warehouseman issued a receipt as follows: "Received of C. C. Cowell for Thompson in store for account and risk C. C. Cowell, one hundred and eighty-three bushels No. 3 wheat, loss by fire, heating and the elements at owner's risk. Wheat of equal test and value, but not the identical wheat, may be returned." The court construed the above contract to mean

that so long as the wheat remains in the elevator, loss by fire, heating and the elements is at the risk of the depositor. In other words, so long as the wheat is kept in the elevator, though thrown in a common bin and mingled with other wheat of like quality, it is a mere bailment. But the warehouseman is not under obligation to retain the wheat of the depositor in his warehouse. He may, without breach of contract, and without being guilty of conversion, ship the wheat away on his own account. When he avails himself of this privilege the character of the transaction and the relation of the parties change. There is then a completed sale, and the warehouseman assumes a liability which he can discharge only by payment in wheat of like quality and value, or in money. *Nelson v. Brown, Doty & Co.*, 44 Ia. 455.

*Same—Statute of limitations in case of.*

In cases of bailment the statute of limitations does not commence to run until the bailee holds the property adversely to the claim of his bailor, that is, until there has been a conversion. *Reizenstein v. Marquardt*, 75 Ia. 294.

H.

*Unclaimed goods—Sale of—Statutory notice—Questions for the jury.*

In an action for conversion against a warehouseman, the defendant alleged that the goods in question had been stored with him and that after the period of six months had elapsed without the payment of charges, he sold the same, as he was authorized to do by law; that pursuant to the statute he had deposited the balance remaining, after deducting his proper charges, with the county treasurer. The plaintiff obtained judgment for the value thereof and the defendant appealed. It is provided by the law that if the goods are of a greater value than one hundred dollars, a different form of notice shall be given than if they are worth one hundred dollars or less. It was left to the jury to say whether the value of the goods exceeded one hundred dollars. It was *held* that this was a proper question for the jury and also, whether or not the notices required by statute were posted in "the most public places in the city."

The plaintiff contended that he was entitled to exemplary damages. It was *held* that no such damages should have been allowed. Verdict and judgment for plaintiff. The case was modified and affirmed to the extent that if the plaintiff would remit two hundred dollars from the amount of the judgment and pay costs of appeal that the same would be affirmed. That otherwise the case would be reversed. *Jeffries v. Snyder*, 110 Ia. 359.

#### I.

*Commingling of grain—If unauthorized constitutes conversion.*

A warehouseman received from the plaintiff a quantity of grain and issued to him the following receipt: "Received in store, of C. Dierkson, twelve loads of wheat, subject to storage. No. of bushels, 462 20-60." Immediately upon the delivery of the grain to the warehouseman it was mingled with other grain therein stored and subsequently sold. The warehouse and contents were destroyed by fire. It was contended on behalf of the plaintiff that the transaction constituted a sale and that the warehouseman was liable for the value of the grain. The defendant contended that as the evidence showed he had in store at the time of the fire more wheat than that claimed by the plaintiff, he was not liable as the contract was one of bailment. The court *held* that under these circumstances, it made no difference whether it were bailment or sale, that the mixture of the plaintiff's wheat with other wheat, without his authority, constituted a conversion and that defendant thereupon became absolutely liable for the value thereof to the plaintiff. *Dierkson v. The Cass County Mill & Elevator Co.*, 42 Ia. 38. But see *Arthur v. Chicago, R. I. & Pac. Ry. Co.*, 61 Ia. 648.

*Same—Without authority of depositor—Does not constitute conversion.*

In an action against a warehouseman for the loss of grain destroyed by fire, in which it was shown that the grain had been mingled with other grain, it was *held* that the mere fact of admixture of goods of the same quality does not divest the owner of his property, whether they acted with or without his knowledge. *Arthur v. Chicago, R. I. & Pac. Ry. Co.*, 61 Ia. 648.

*Same—Separation by warehouseman.*

Grain belonging to a warehouseman's several depositors, and some belonging to himself, were mingled with the knowledge of all parties. The warehouseman without the consent of his depositors shipped an amount of the grain from the warehouse in excess of that which he owned. It was *held* that the grain remaining in the warehouse belonged to the several parties who held valid receipts therefor. *Sexton & Abbott v. Graham et al.*, 53 Ia. 181.

**Q.**

*Warehouse receipts—When invalid—Gambling transactions through board of trade.*

An instruction to the jury that certain warehouse receipts were void if, they found from the evidence that the receipts were delivered, not for the purpose of affecting a sale of the commodity which they represented, and that the purchase price therefor was never to be paid, but that the matter was to be settled and adjusted by the payment of the difference between the purchase or selling price, and the market price at the time of the settlement, was *held* correct on the ground that it was a gambling contract. *Lowe Bros. v. Young*, 59 Ia. 364, following *Pixley v. Boynton*, 79 Ill. 351.

*Same—Negotiability—Scale tickets not warehouse receipts—Purchaser not protected.*

The plaintiff purchased certain scale tickets from one who had deposited a quantity of wheat with the defendant warehouseman. Such depositor had been notified by the defendant to surrender the tickets and receive in lieu thereof warehouse receipts. He failed to do this, however, and sold the tickets to the plaintiff. Before such sale was made the defendant had sold the wheat and had appropriated the money received therefrom towards the payment of a debt owed by the depositor to the warehouseman. On the above stated facts it was *held* that the plaintiff could not recover, that the scale tickets held by plaintiff were not warehouse receipts and that when he took the same he took no title thereby. The tickets failed to show that the transaction was a contract and there

was no statement thereon as to the number of bushels or grade of the wheat nor as to terms or conditions of storage. *Cathcart v. Snow & Huber*, 64 Ia. 584.

*Same—As collateral—Person to whom issued having no title to the goods—Effect.*

A warehouseman issued a receipt to one who had no grain in store at the time but to secure the payment of indebtedness due by the warehouseman to such person. It was held that such receipt was invalid as against one who was the *bona fide* holder of the original valid receipt and that under sections 2171 and 2172 of the Code, the person to whom the warehouse receipt is issued must be the owner of the goods represented thereby. *Sexton & Abbott v. Graham et al.*, 53 Ia. 181.

*Same—Parol evidence not receivable to contradict or vary the terms thereof.*

If warehouse receipts are regarded merely as receipts they may be explained by parol evidence and a contract existing between the parties may be shown by competent testimony. But if they are to be regarded as contracts, they cannot be explained or varied by oral evidence. While such evidence may be admitted to explain the language of the receipts, if ambiguous, the terms, conditions and obligations of the contract cannot be changed in that way. *Marks v. The Cass County Mill & Elevator Co.*, 43 Ia. 146; *Lowe Bros. & Co. v. Young*, 59 Ia. 364.

*Same—Evidence of oral agreement receivable—Custom.*

The plaintiff sued the defendant, a warehouseman, for the value of certain grain which he had stored with him, expressly alleging that the contract was not in writing. After the storage of the grain, the warehouse and contents were destroyed by fire. The defendant, in his answer, set forth that the wheat, in accordance with the custom known to the plaintiff, had been mixed with other wheat then in store and that the same number of bushels of other grain of the same grade were stored in the warehouse at the time of its destruction. The defendant showed that this custom was known to plaintiff. At the trial the plaintiff offered his warehouse receipts in evidence to prove

that the contract was one of sale and not bailment. The court held that as the plaintiff had stated in his declaration that the contract was an oral one, he could not at the trial introduce proof to the effect that the warehouse receipt contained all the terms of the contract. It was further held that the evidence of the custom in regard to the mixing of grain was properly received. This case distinguished from *Johnson v. Browne*, 37 Ia. 20. *Hughes v. Stanley*, 45 Ia. 622; *Irons v. Kentner*, 51 Ia. 88.

### R.

#### *Bill of lading—“Good order,” effect of.*

Where plaintiff took bill of lading from steamboat company in which it acknowledged to have received “in good order” 230 barrels of mess pork, held that the good order, etc., referred only to the external condition and not to the state of the pork itself. *West v. Steamboat Berlin*, 3 Ia. 532; *Mitchell v. U. S. Ex. Co.*, 46 Ia. 214.

#### *Same—Effect of assignment—Parol testimony.*

An assignment of a bill of lading operates as a transfer of the title to the property therein represented. Where, therefore, there was a provision printed across the face of a bill of lading to this effect, “This bill to be surrendered before property is delivered,” it was held that a party taking such bill of lading as collateral had a right to rely upon this provision and that it was part of the contract. Further, that parol testimony would not be received to vary or contradict the bill of lading in so far as the same was a contract. *Garden Grove Bank v. Humeston, etc., Ry. Co.*, 67 Ia. 526; *Hewett v. Chicago, B. & Q. Ry. Co.*, 63 Ia. 611; *Wilde v. Merchants’ Despatch T. Co.*, 47 Ia. 272; *Chapin & Irish v. Chicago, M. & St. P. Ry. Co.*, 79 Ia. 582; *Higley & Co. v. Burlington, C. R. & N. Ry. Co.*, 99 Ia. 503; *First National Bank v. Mt. Pleasant Milling Co.*, 103 Ia. 518. But see *Anchor Mill Co. v. Burlington, C. R. & N. Ry. Co.*, 102 Ia. 262.

#### *Same—Delivery pursuant to consignee’s directions without return of bill of lading—Subsequent assignment of bill of lading by consignee ineffectual.*

The plaintiff purchased a carload of wheat from the consignee

thereof which was stored in the cars belonging to the defendant railroad company. The consignee directed the defendant to place the cars at a certain point designated by the plaintiff which it accordingly did. At this time the consignee did not surrender the bill of lading to the plaintiff but he used the same in the purchase of a draft at a bank which became an intervenor in this action. At the trial the court, on motion of the intervenor, directed a verdict for it which was accordingly rendered. On appeal it was *held* that the placing of the cars by the defendant railroad company in the location designated by the consignee constituted a delivery to the plaintiff, and the liability of the defendant as carrier thereupon ceased. That the plaintiff then became the purchaser thereof and the subsequent assignment of the bill of lading to the intervenor could not deprive the plaintiff of his title to the wheat. *Anchor Mills Co. v. Burlington, C. R. & N. Ry. Co.*, 102 Ia. 262.

## CHAPTER XVI.

**KANSAS.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Corporations may be formed :**

In addition to the purposes for which private corporations may be formed, as designated in section five of chapter twenty-three of the General Statutes of 1868, as said section has been heretofore enlarged and amended, private corporations may be formed and organized in the manner prescribed in said chapter twenty-three for the construction and maintenance of warehouses, elevators and granaries. Gen. Stats. Kan. 1901, sec. 1431.

**Property left in warehouses :**

If any person shall leave in any public or private warehouse in this state any property of a perishable nature, or which, if not taken away and sold within fifteen months from the time at which such property was so left, would not at the expiration of that time be worth the charges which should then be due upon such property, and if the charges upon such property shall not be paid, then and in that case it shall be lawful for the occupant or occupants of such warehouse to sell at auction to the highest bidder so much of such property as will pay the charges due, and the expenses of selling and advertising the same, upon giving not less than three weeks' public notice of the time and place of such sale, in two or more newspapers published in the town where such warehouse may be situated, or the vicinity thereof. *Id.* sec. 1432.

**Receipts may be issued :**

No warehouseman, wharfinger or other person shall issue any receipt or other voucher for any goods, wares, merchandise, grain, or other produce or commodity, to any person or persons

purporting to be the owner or owners thereof, unless such goods, wares, merchandise, or other produce or commodity shall have been *bona fide* received into store by such warehouseman, wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt. *Id.* sec. 1433.

**Not to be issued :**

No warehouseman, wharfinger or other person shall issue any receipt or other voucher upon any goods, wares, merchandise, grain, or other produce or commodity, to any person or persons as security for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity shall be, at the time of issuing such receipt, the property of such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt or other voucher, as aforesaid. *Id.* sec. 1434.

**Written assent :**

No warehouseman, wharfinger or other person shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt. *Id.* sec. 1435.

**Private and public :**

All persons who shall keep a warehouse in this state for the storing of grain, in which the grain of each person stored therein shall be kept in a separate bin, distinct from the grain of all other persons, shall be dominated "private warehousemen," and all persons keeping a warehouse for the storing of grain in bulk, and in which the grain of different owners shall in any way be mixed, shall be dominated "public warehousemen." *Id.* sec. 1436.

**Give receipt :**

Every public and private warehouseman receiving grain into store shall, on demand of the owner thereof, receipt to such owner, setting forth the quantity, kind and grade of such grain, which receipt, in any action against such warehouseman for

damages to such grain, or for other cause relating thereto, shall be evidence of the quantity, kind and grade of such grain, and when received by such warehouseman. *Id.* sec. 1437.

#### **Grain kept separate :**

Every private warehouseman shall keep the grain of every person that may be stored with such warehouseman entirely separate and distinct from the grain or property of a like nature, kind or quality, of any other person or persons; and upon the surrender of the warehouse receipt provided in section three of this act shall deliver to the person so surrendering the same the identical grain described in such receipt, and for which said receipt was issued. *Id.* sec. 1438.

#### **Grain in bulk :**

It shall be lawful for public warehousemen to store grain in bulk, and mix the grain of like kind and grade of different owners; and the provisions of this act prohibiting the mixing of the grain of different owners have no application to public warehousemen. *Id.* sec. 1439.

#### **Receipts—Numbered—Duplicates—Cancellation—Punishment :**

All warehouse receipts issued to the owners of grain stored in any warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued for the same grade of grain by any warehouseman from the same warehouse during the same calendar year; nor shall any warehouseman issue to any person any second receipt for any grain in store while any former or other receipt for the same grain, or any part thereof, shall be outstanding and uncancelled, except in cases of lost receipts, when "duplicates," so marked, may be issued; nor shall any receipt be issued to any person for a greater amount of grain than such person shall have delivered in store at the time of the issuing of such receipt; nor shall any receipt be reissued on which grain has once been delivered; nor shall any receipt be issued unless the grain for which such receipt is issued shall be actually in store and under the control of the warehouseman issuing such receipt at the time such receipt was issued; and every receipt, when once surrendered, and the

grain for which it was issued delivered, shall be cancelled, and shall never thereafter be put in circulation. Any person who shall violate any of the provisions of this section, or who shall negotiate or put in circulation any warehouse receipt issued in violation of any of the provisions of this act, knowing the fraudulent character of such receipt, shall be deemed guilty of a felony, and on conviction thereof shall be fined in a sum not less than one thousand dollars nor more than five thousand dollars, and imprisoned in the penitentiary not less than one year nor more than five years. *Id.* sec. 1440.

#### **Negotiable :**

All receipts for grain issued by any warehouse shall be negotiable by indorsement in blank, or by special indorsement, in the same manner and to the same extent as bills of exchange and promissory notes. *Id.* sec. 1441.

#### **Above section construed :**

Secretary and manager of an elevator company having full authority to issue warehouse receipts did so to the plaintiff bank as security for a loan. *Held*, the receipt was negotiable paper and defendant was estopped to deny its liability thereon. *Bank v. Capital Elevator Co.*, 9 Kan. App. 144.

#### **Right to visit scales :**

All persons interested in any grain stored in any warehouse shall at all times have the right to visit such warehouse, and every part thereof containing grain, and shall have the right to examine the bin or bins into which his grain is being delivered, or from which it is being taken, or into which it is or may be stored, and shall also have the right to inspect and test the scales on which such grain is being weighed; and in case any inaccuracy is suspected, may demand that the public sealer of weights may test the said scale. If they are found correct, he shall pay the fees of such sealer, but if found incorrect, such fees shall be paid by the warehouse keeper. And all persons authorized by law to inspect or grade grain shall have the right during business hours to visit and examine all the bins of each warehouse and the grain therein stored. *Id.* sec. 1442.

**Damaged grain :**

It shall be lawful for any public warehouseman to sell any or all damaged grain which has remained in store for one year or more, and which shall have become damaged while stored in his warehouse, for account of parties having claim thereto, after giving thirty days' notice, by publication in some newspaper published in the city or town where such warehouse is situated. *Id.* see. 1443.

**Duties of railway companies—Liability—Notice to consignee :**

It shall be unlawful for any railroad or railway company to deliver any grain into any warehouse, other than that to which it is consigned, without consent of the owner or consignee thereof; and it shall be the duty of said party or parties, at the time of shipment of said grain, or before it reaches its destination, to give notice to the railroad or railway company, by card on the car or otherwise, of the warehouse into which said grain is to be delivered; and for the failure to deliver grain according to the direction of the owner or consignee thereof, such railroad or railway company shall be liable to the warehouseman to whom the same should have been delivered for two months' storage of all such grain so consigned or refused, and also to such warehouseman and to the owner of such grain for all other damages either of them may have sustained by reason of such refusal or neglect of said railroad or railway company, including all necessary expenses incurred by him or them in the prosecution of suit or suits against such railroad or railway company; or, if such grain is to be taken from the cars without delivery into any warehouse, the railroad or railway company, shall be notified in like manner thereof; and in such case said railroad or railway company shall notify said owner or consignee of the arrival of said grain at its destination, and give a seasonable [reasonable] time for the removal of the same, and for the failure to give such notice, when necessary, to the owner or consignee of the arrival of grain, or for delivery of the same into any warehouse without the consent of such owner or consignee, or without notice or opportunity to remove the same from the cars of said railroad or railway company, where said consent is not

given, such railroad or railway company shall be liable to the owner of such grain for all damages he may have sustained by reason of the illegal action of such railroad or railway company, including all necessary expenses incurred by him in the prosecution of such suits therefor, and all necessary expenses incurred by him against other parties to recover possession of such grain. *Id.* sec. 1444.

#### **Grain inspection :**

That a department of record for the inspection and weighing of grain is hereby established, to be called the state grain inspection department. Said department shall have full charge of the inspection and weighing of grain in the state at all railroad terminals, public warehouses or other points within the state wherever state grain inspection and weighing may hereafter be established, at the discretion of the chief inspector. *Id.* sec. 3223.

#### **Inspector :**

It shall be the duty of the governor to appoint a suitable person, to be confirmed by the senate, who shall be known as the chief inspector of grain for the state of Kansas, whose term of service as such shall continue for two years from date of his appointment, unless removed for cause. Said chief inspector shall not directly or indirectly be interested in buying or selling grain, either on his own account or for others, nor shall he be directly or indirectly interested in handling or storing grain as a public warehouseman or on private account during his term of office. *Id.* sec. 3224.

#### **Duties :**

It shall be the duty of the chief inspector to have a general supervision of the inspection and weighing of grain as required by this act or laws of the state; to supervise the handling, inspecting, weighing and storage of grain; to establish necessary rules and regulations for the weighing, grading and inspection of grain as have not otherwise been herein provided for, and for the management of the public warehouses of the state, as such rules and regulations may be necessary to enforce the provisions of this act or any law of this state in regard to the

same; to keep proper records of all the inspecting and weighing done, for which purpose he shall have power to employ the necessary office force and procure the necessary books, blanks and other material needed in order to keep perfect and proper records. He shall investigate all complaints of fraud or oppression in the grain trade, and correct the same so far as may be in his power: *Provided*, That nothing in this section shall be construed as delegating any power or authority to said chief inspector inconsistent or in conflict with the powers and authority delegated to other persons by the provisions of this act. *Id.* sec. 3225.

#### **Oath and bond :**

The chief inspector shall, upon entering upon the duties of his office, be required to take an oath that he will faithfully and strictly discharge the duties of his said office of inspector according to law and the rules and regulations prescribing his duties. He shall execute a bond to the people of the state of Kansas in the penal sum of ten thousand dollars, with sureties to be approved in the same manner as bonds of other appointed officers, conditioned that he will pay all damages to any person or persons who may be injured by reason of his neglect, refusal or failure to comply with the law, rules and regulations of this act. *Id.* sec. 3226.

#### **Assistant inspector :**

The said chief inspector shall be authorized to recommend to the governor suitable persons as may be qualified for assistant inspectors, or weighmasters, to be acting inspectors or weighmasters in the absence of the chief inspector, who shall not be interested in any public or private grain warehouse, or in the buying or selling of grain, either directly or indirectly, and also such other employees as may be necessary to properly conduct the business of his office; and the governor shall be authorized to make such appointment if found by him necessary. *Id.* sec. 3227.

#### **Bond of assistant :**

All assistant inspectors or weighmasters appointed under this act shall be under the supervision of the chief inspector, to

whom they shall report in detail all service performed by them at the close of each working-day, and each assistant inspector or weighmaster shall take the same oath as the chief inspector, and execute a bond in the penal sum of five thousand dollars, with like conditions and to be approved in like manner as provided for the bond of the chief inspector. Suit may be brought upon bonds of either the chief inspector or assistant inspectors in any court having jurisdiction thereof, in the county or city where the defendant resides, for the use of any person injured by the act of said chief inspector or assistant inspectors. *Id.* sec. 3228.

#### **Establish grades :**

The chief inspector shall, before the first day of September of each year, establish a grade for all kinds of grain brought or handled in the state, which shall be known as "Kansas grades," and to facilitate this object he shall notify the board of trade in the state, so that they may send representatives to consult and counsel with the chief inspector in establishing the grades; and the grades so established shall be published in three daily papers in the state each day for the period of one week. *Id.* sec. 3229.

#### **Samples :**

It shall be the duty of the chief inspector of grain to furnish any public elevator or warehouse in this state standard samples of the several grades as established by official inspection, when requested so to do by the proprietor, lessee or manager thereof, at the actual cost of such samples. *Id.* sec. 3230.

#### **Fees—Report :**

The fees for inspecting, weighing and sampling of grain by the officers of the state grain inspection department shall be as follows: For inspecting and sampling each carload, forty cents; for inspecting out of elevators, thirty-five cents per car; for weighing, twenty-five cents per car; for reinspecting, where the former inspection and grade are sustained, fifty cents per car; and in all cases where samples of carlots of grain inspected are demanded, the charge for each sample shall be twenty-five

cents. Any and every person, firm, company, corporation or association for whom grain shall be inspected, weighed or sampled by any of the officers of said department shall on or before the tenth day of each month, file a sworn and detailed report with the auditor of state, setting forth the number of ears of grain inspected or weighed by and the number of samples of grain received from the officers of said department during the preceding month; also the amount of money paid for such services, with the date of payment, and the name of the person to whom paid. And every person, for himself, or as an officer or representative of any such firm, company, corporation, or association, who shall fail or neglect to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars. *Id.* sec. 3231.

#### **Charges a lien :**

The charge for inspection and weighing of grain shall be and constitute a lien on the grain so inspected or weighed, and whenever such grain is in transit the said charges shall be treated as advanced charges, shall be collected and paid by the common carrier in whose possession the same is at the time of such inspection or weighing. *Id.* sec. 3232.

#### **Report :**

The chief inspector of grain shall, on or before the tenth day of each month, file with the auditor of state a full and detailed report, under oath, of the work done in his department for the preceding month, setting forth the number of ears of grain inspected and weighed, and by whom, the number of samples furnished, the amount of revenue collected by himself and the assistant inspectors and weighmasters; and the chief inspector shall at the time of filing his report with the auditor of state, pay into the state treasury all money received as fees for the inspecting, weighing or sampling of grain for the preceding month, which money shall be credited to the general fund. *Id.* sec. 3233.

#### **Assistants—Salaries—Employees :**

In every city or at every railroad terminal in the state where

more than one assistant inspector is employed, the chief inspector shall designate one of the assistant inspectors, to be known as first assistant inspector, whose duty it shall be to make and compile report of his respective jurisdiction, and who shall collect the reports of the other assistants and forward the same to the chief inspector. The chief inspector shall keep his office and place of business in the city of Kansas City, Kansas, and shall receive an annual salary of fifteen hundred dollars in monthly payments of one hundred and twenty-five dollars each, and shall be allowed all actual and necessary travelling expenses paid in cash while attending to official duties; said salary and expenses to be paid said chief inspector upon sworn vouchers, properly itemized, and audited by the state auditor the same as other vouchers, and warrants drawn upon the state treasurer for the payment thereof; and the assistant inspectors shall each receive a salary of eighty-five dollars per month; and the weighmasters, who are not inspectors, shall each receive a salary of sixty-five dollars per month; and the employees known in said department as "helpers" shall each receive a salary of sixty dollars per month; all said salaries to be paid in the same manner as the salary of the chief inspector; and all other employees of said department shall receive their salaries in the same manner as provided for the payment of the salary of the chief inspector: *Provided, however,* That if at any place where state inspection has been or may hereafter be established the total revenue obtained is less than the salary paid to an assistant inspector, the chief inspector may abolish such branch of the service, or at his discretion arrange with the officer in charge to accept as full compensation for his service an amount equal to the whole revenue obtained at such place. *Id. sec. 3234.*

#### **Penalties:**

Any duly authorized chief inspector, assistant inspector or weighmaster of grain under this act who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect, grade or weigh any grain improperly, or who shall accept any money or other valuable consideration, directly or indirectly, for any neglect of duty as such grain inspector, assistant inspector, or weighmaster, shall be deemed guilty of a misdemeanor, and on

conviction shall be fined in the sum not less than five hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail not less than six months nor more than twelve months, or both such fine and imprisonment, in the discretion of the court, and upon conviction of any such offense, such chief inspector, assistant inspector or weighmaster shall forfeit his office. *Id.* sec. 3235.

#### **Only qualified inspectors to act :**

The inspection or grading of grain in this state, whether into or out of warehouses, elevators, or in cars, barges, wagons, or sacks, arriving at or shipped from points where state grain inspection is established, must be performed by such persons as may be duly appointed, sworn, and have given bond under this act; and any person who shall assume to act as inspector or weigher of grain, who has not first been appointed and qualified in accordance with the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for not less than three months nor more than six months, or both such fine and imprisonment, at the discretion of the court, for every such offense so committed. *Id.* sec. 3236.

#### **Exclusive control :**

The chief inspector of grain and assistant inspectors and weighmasters shall have exclusive control of the weighing and inspecting of grain in all public warehouses and all places where grain is weighed or inspected under this act, for the purpose of inspection of scales, and the action and certificates of such inspectors and weighmasters shall be conclusive upon all parties interested. *Id.* sec. 3237.

#### **Bribery :**

Any person, or any representative of a firm, trust, corporation or association who shall bribe or offer to bribe any of the officers created under this act shall be deemed guilty of a felony, and upon conviction shall be punished by confinement at hard labor in the penitentiary for a term not exceeding seven years. *Id.* sec. 3238.

**Decision final :**

The decision or any of the assistant inspectors as to the grade of grain shall be final and binding on all parties, unless an appeal is taken from such decision as hereinafter provided. *Id.* sec. 3239.

**Appeals :**

In case any owner, consignee or shipper of grain, or any warehouse manager, shall be aggrieved by the decision of any assistant inspector, an appeal may be taken to a standing committee of three, which the chief inspector shall appoint at every point where state inspection may be established. Said committee shall consist of experienced grainmen, and their decision shall be final in the controversy: *Provided*, That the party appealing shall pay said committee a sum not to exceed three dollars per case before said appeal shall be entertained, and in case said appeal is not sustained the said three dollars so deposited shall be full compensation for such arbitration. In the event of the appeal being sustained, the three dollars so deposited shall be returned to the party appealing, and the arbitration committee shall receive three dollars in full for their services from the state inspection department. *Id.* sec. 3240.

**Selling grain by sample :**

Nothing in this act shall be construed so as to prevent any person from selling grain by sample, regardless of grade; but the provisions of this act shall not change the liabilities of the warehouseman on grain now in store, nor the inspection thereof, but said inspection shall be had under the same system under which it was received into store. *Id.* sec. 3241.

**Attorney :**

The attorney general of the state of Kansas shall be *ex officio* attorney for the chief inspector, and shall give him such counsel and advice as he may from time to time require, and said attorney general shall institute and prosecute all suits which said chief inspector may deem expedient and proper to institute; and he shall render to said chief inspector all counsel,

advice and assistance necessary to carry out the provisions of this act, according to the true meaning and intent thereof. In all criminal prosecutions against a warehouseman for a violation of any of the provisions of this act, it shall be the duty of the county attorney of the county in which such prosecution is brought to prosecute the same to a final issue. *Id.* sec. 3242.

**Repeal :**

Be it further enacted, that sections 16 to 32 (both inclusive) and sections 35 to 42 (both inclusive) of chapter 248 of the Session Laws of 1891, and all acts and parts of acts and all laws inconsistent with the provisions of this act, are hereby repealed. *An Act to regulate warehouses, the inspection, grading, weighing and handling of grain, and the providing for the appointment of a state grain inspector.* *Id.* sec. 3243.

**Public warehouses :**

That all elevators or warehouses located in this state in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved, and doing business for a compensation, and having capacities of less than seventy-five thousand bushels each, are hereby declared public warehouses. *Id.* sec. 3244.

**Above section construed :**

Grain deposited under provisions of this chapter does not become property of warehouseman. The title is in the holders of the respective warehouse receipts. *Bryan v. Congdon*, 54 Kan. 109.

**Procure license :**

That the proprietor, lessee or manager of any public warehouse shall be required, before transacting any business, to procure from the regular chartered and acting board of trade in the nearest city of the first or second class, as the case may be, a license permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by said board of trade upon written application therefor; and said application shall

set forth the name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same; or if the warehouse be owned or managed by a corporation, the names of the president and secretary shall be stated, and said license shall give authority to carry on and conduct the business of a public warehouse in accordance with the laws of the state, and shall be revocable by the board of trade issuing the same upon a summary proceeding before said board, upon complaint of any person in writing setting forth the particular violation of law; satisfactory proof to be taken in such manner as said board may direct, having first been made of such violation. *Id.* sec. 3245.

#### **Above section construed :**

In a proceeding under the above statute to restrain an alleged improper exercise of power thereunder, the state must be party plaintiff. *Jones v. Board of Trade*, 52 Kan. 95.

#### **File bond :**

Any person receiving a license as herein provided shall file immediately with the secretary of state a bond to the state of Kansas for the benefit of all persons interested, with good and sufficient sureties approved by said board of trade, in the penal sum of not less than ten thousand dollars nor more than fifty thousand dollars, in the discretion of the board of trade issuing such license, conditioned for the faithful performance of his duty as a public warehouseman and his full and unreserved compliance with all laws of this state in relation thereto. A fee of two dollars for the issuance of each license and filing of said bond shall be paid to the secretary of state by the person obtaining said license and filing said bond: *Provided*, That when any person or corporation procures a license for more than one warehouse in any one county in the state, no more than one bond need be given. *Id.* sec. 3246.

#### **Penalty :**

Any person who shall transact the business of a public warehouseman without first procuring a license and filing said bond as herein provided, or who shall continue to transact any such

business after such license has been revoked (save only that he be permitted to deliver property previously stored in such warehouse), shall on conviction thereof be fined in a sum not less than one hundred dollars nor more than five hundred dollars for each and every day such business is carried on in such manner; and the board of trade having such warehouse under its supervision may refuse to renew any license or grant a new one to any person whose license has been revoked, within one year from the time the same was revoked. *Id.* sec. 3247.

#### **Receive for storage :**

It shall be the duty of every public warehouseman to receive for storage any grain, dry and suitable for warehousing, that may be tendered to him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between the persons desiring to avail themselves of warehouse facilities. Such grain to be in all cases inspected and graded by a duly authorized inspector, but to be stored with grain of a similar grade; but if the owner or consignee so requests, and the warehouseman consents thereto, his grain of the same grade may be kept in a bin by itself apart from that of other owners, which bin shall thereupon be marked and known as a special bin. If a warehouse receipt be issued for grains so kept separate, it shall state on its face it is a special bin, and shall state the number of such bin; and all grain delivered from such warehouse shall be inspected on its delivery by a duly authorized inspector of grain. Nothing in this section shall be construed so as to require the receipt of any kind of grain into a warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where such warehouse is necessarily closed. The charge for inspection, upon receipt and delivery, shall be paid by the warehouseman, and may be added to the charge of the storage. The licensing board of trade may recover such charges of the warehouseman by an appropriate action in its name. *Id.* sec. 3248.

#### **Warehouse receipt :**

Upon the application of the owner or consignee of grain

stored in a public warehouse, the same being accompanied with evidence that all transportation or other charges which may be a lien upon the grain, including the charges for freight, inspection and weighing, have been paid, the warehouseman shall issue to the person entitled to receive it, a warehouse receipt therefor, subject to the order of the owner of consignee, which receipt shall bear date corresponding with the receipt of the grain in store, and shall state upon its face the quantity and inspected grade of the grain, and that the grade mentioned on it has been received into store to be stored with grain of the same grade by inspection, and that the grain represented thereby is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and the payment of proper charges for storage. *Id.* sec. 3249.

#### **Receipts numbered :**

All warehouse receipts for grain issued by the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face, "Duplicate." If the grain was received from railroad cars, the number of each car shall be stated on the receipt, with the amount it contained; if from barges or other vessels, the name of such craft; if from team or other means, the manner of its receipt shall be stated on its face. *Id.* sec. 3250.

#### **Cancellation of receipt :**

Upon the delivery of grain from store upon any receipt, such receipt shall be plainly marked across its face the word, "Cancelled," with name of the person cancelling the same, and thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. No warehouse receipt shall be issued except upon an actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipt. Nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel so received, nor shall more than one

receipt be issued for the same lot of grain, except in cases where a receipt for a part of a lot is desired, and then the aggregated receipt for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of the store and the remainder is left, a new receipt may be issued for such remainder, but the new receipt shall bear the same date as the original, and shall state on its face that it is balance of receipt of the original number; and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt or receipts shall be cancelled the same as if the grain had been delivered from the store, and the new receipt or receipts shall express on their face that they are a part of another receipt or consolidation of other receipts, as the case may be, and the number of the original receipts shall also appear on the new ones issued as explanatory of the change; but no consolidation of receipts differing more than ten days in date shall be permitted. All new receipts issued for old ones cancelled as herein provided shall bear the same date as those originally issued, as near as may be. *Id.* sec. 3251.

#### **Not alter receipt :**

No warehouseman in this state shall insert in any receipt issued by him any language in anywise limiting or modifying his liabilities or responsibility as imposed by the laws of this state. *Id.* sec. 3252.

#### **Property delivered on return of :**

On the return of any warehouse receipt properly indorsed, and the tender of all proper charges upon the property represented by it, such property shall be immediately delivered to the holder of such receipt, and shall not be subject to any further charges for storage after demand for such delivery shall have been made; and the property represented by such receipt shall be delivered within twenty-four hours after such demand shall have been made and the cars or vessels for transporta-

tion of same shall have been furnished. The warehouseman in default shall be liable to the owner of such receipt for damages occasioned by such default in the sum of one cent per bushel, and in addition thereto one cent per bushel for each and every day of such neglect or refusal to deliver: *Provided*, No warehouseman shall be held to be in default in delivering if the property is delivered in the order demanded and as rapidly as due diligence, care and prudence will justify; but no grain shall be delivered from store or warehouse until the receipt for same shall have been actually returned. *Id.* sec. 3253.

#### **Furnish statement:**

It shall be the duty of every owner, lessee and manager of every public warehouse in this state to furnish in writing, under oath, at such times as the board of trade issuing his license shall require and prescribe, a statement concerning the condition and management of the business as such warehouseman. *Id.* sec. 3254.

#### **Statement to be posted up:**

The warehouseman of every public warehouse located in this state shall, on or before every Tuesday morning of each week, cause to be made out and shall keep posted up in business office of his warehouse, in a conspicuous place, a statement of the amount of each kind and grade of grain in store at his warehouse at the close of business on the previous Saturday, and shall on each Tuesday morning render a similar statement made under oath by one of the principal owners or operators, or by the bookkeeper thereof having personal knowledge of the facts, to the secretary of the board of trade issuing the license of said warehouse; he shall also be required to furnish daily to said secretary a correct statement of the amount of each kind and grade of grain received in store in such warehouse on the previous day for which receipts have been issued, also the amount of each kind and grade of grain delivered or shipped by such warehouseman during the previous day for which receipts have been returned, and what warehouse receipts upon which the grain has been delivered on such day have been cancelled, giving the number of each receipt, and the

amount, kind and grade of grain received and shipped upon each; also, how much grain, if any, was so delivered or shipped, and the kind and grade of it for which warehouse receipts had not been issued; the aggregate of such reported cancellation and delivery of unreceipted grain corresponding in amount, kind and grade with the amount so reported delivered or shipped. He shall also at the same time report what receipts, if any, have been cancelled and new ones issued in their stead, as herein provided for; and the warehouseman making such statement shall, in addition, furnish the secretary of said board of trade any further information regarding the receipts issued or cancelled that may be necessary to enable him to keep a full and correct record of all receipts issued and cancelled, and of grain received and delivered. *Id.* sec. 3255.

#### **Schedule of rates :**

Every warehouseman of public warehouses located in this state shall be required, during the first week in September of each year, to publish in one or more of the newspapers (daily, if there is such) published in the city or village in which such warehouse is situated, a table or schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased during such year. The maximum charge for storage and handling of grain, including the cost of receiving and delivering, shall be, for the first fifteen days or part thereof, one cent per bushel; and for each fifteen days or part thereof after the first fifteen days, one half cent per bushel; and for continuous storage between the fifteenth day of November and fifteenth day of May following, no more than four cents a bushel. *Id.* sec. 3256.

#### **Be permitted to dry or clean—Damages :**

Any public warehouseman may, on the written request of the owner of any grain stored in a private bin, upon the surrender of the receipt therefor, be permitted to dry, clean, or otherwise change the condition or value of any such lot of grain; but in such case it shall only be delivered as such separate lot, without reference to the grade it may be made by such process of drying or cleaning. Nothing in this section, however, shall prevent

any warehouseman from removing grain within his warehouse, for its preservation or safe-keeping. No public warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same; nor shall he be held liable for damage to grain by heating, if it can be shown that he has exercised proper care in handling and storing the same, and that such heat or damage was the result of causes beyond his control. In order that no injustice may result to the holder of grain in any public warehouse, it shall be the duty of such warehouseman to dispose of, by delivery or shipping in the ordinary and legal manner of so delivering, that grain of any particular grade which was first received by him, or which has been for the longest time in store in his warehouse; and unless the public notice hereinafter provided has been given, that some portion of the grain in his warehouse is out of condition, or is becoming so, such warehouseman shall deliver grain, of quality equal to that delivered to him, on all receipts as presented. In case, however, any warehouseman shall discover that any portion of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give personal notice to the owner, if known, and if not known by public notice by advertising in a daily newspaper in the city in which such warehouse is situated, and by posting a notice in the most public place (for such purpose) in such city, of its actual condition, as near as he can ascertain. It shall state in such notice the kind and grade of the grain, and the bin in which it was stored, and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers, amount and date of each, which receipts shall be those of the oldest dates and numbers then in circulation or uncancelled, the grain represented by which has not previously been declared or receipted for as out of condition; or if the grain longest in store has not been receipted for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, and the amount of it; and the enumeration of receipts and the identification of grain so discredited shall embrace as near as

may be as great a quantity of grain as is contained in such bins; and such grain shall be delivered upon return and cancellation of the receipts, and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition, but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act or neglect, the effect of which is to depreciate property stored in the warehouse under his control, shall be held responsible therefor to the person damaged thereby, and the bond of such warehouseman shall be held for all damages occasioned thereby. Nothing in this section shall be construed so as to permit any warehouseman to deliver any grain stored in a special bin or by itself as provided in this act to any but the owners of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition as herein provided for shall not be removed from store by owner thereof within thirty days from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction for account of said owner by giving ten days' public notice by advertisement in a newspaper (daily, if there be such) published in the city or town where such warehouse is located. *Id.* sec. 3257.

#### **Examination of :**

All persons owning property, or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property, shall at all times during the ordinary business hours be at full liberty to examine any and all property stored in any public warehouse in this state, and all proper facilities shall be extended to such person by the warehouseman, his agents and servants, for an examination, and all parts of the public warehouse shall be free for the inspection and examination of any person interested in property stored therein, or of any authorized inspector of such property; and all scales used for weighing of property in public warehouses shall be

subject to the examination and test by any duly authorized inspector, weighmaster or sealer of weights and measures at any time when required by any person or persons, agent or agents, whose property has been or is to be weighed on such scales, and the fee for said test shall be paid by the parties making such demand if the scales are found correct, and by the warehouse proprietors if found incorrect. Any warehouseman who may be guilty of continuing to use scales found to be in an imperfect or incorrect condition by such examination and test, until the same shall have been pronounced correct and properly sealed, shall be liable to be proceeded against as hereinafter provided.  
*Id.* sec. 3258.

#### **In case of dissatisfaction :**

In case any owner or consignee of grain shall be dissatisfied with the inspection of any lot of grain, or shall from any cause desire to receive his property without it passing into store, he shall be at liberty to have the same withheld from going into the public warehouse (whether the property may have been previously consigned to such warehouse or not), by giving notice to the person or corporation in whose possession it may be at the time of giving such notice; and such grain may be withheld from going into store, and be delivered to him subject only to such proper charges as may be a lien upon it prior to such notice; the grain in railroad cars to be removed therefrom by such owner or consignee within twenty-four hours after such notice has been given to the railroad company having it in possession, *provided*, such railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow such owner or consignee to receive his grain shall be deemed guilty of conversion, and shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such grain is not to be delivered into store may also be given to the proprietor or manager of any warehouse into which it would otherwise have been delivered, and if after such notice it be taken into store in such warehouse, the proprietor or manager of such warehouse shall be liable to the owner of such grain for double its market value.  
*Id.* sec. 3259.

**Unlawful :**

It shall be unlawful for any proprietor, lessee or manager of any public warehouse to enter into any contract, agreement, understanding or combination with any railroad company or other corporation, or with any individuals, by which the property of any person is to be delivered to any public warehouse for storage, or for any purpose contrary to the directions of the owner, his agent or consignee. *Id.* sec. 3260.

**Bill of lading—Shortage :**

Each railway company operating a railway wholly or partly within this state shall be required to give to any person delivering grain, seed or hay in bulk or in sacks to such company for transportation, at any station entitled to track scales under this act, a bill of lading, in duplicate, which bill of lading shall state the exact number of bushels or pounds of grain, seed or hay so delivered to such railway company, by whom delivered and to whom consigned; and thereafter such railway company shall be responsible to the consignee named in said bill of lading, or to his heirs or assigns for the full amount of such grain, seed or hay so delivered to such railway company, until it shall show that it has delivered the whole amount of such grain, seed or hay to such consignee or to his heirs or assigns: *Provided, however,* That if the shortage on any car of grain, seed or hay shall not exceed one fourth of one per cent of the amount of grain, seed or hay put in the car then the railway company shall be deemed to have delivered the whole amount of grain, seed or hay in the car. And in any action hereafter brought against any railway company for or on account of any failure or neglect to deliver any such grain, seed or hay to the consignee, or his heirs or assigns, either duplicate of such bill of lading shall be conclusive proof of the amount of such grain, seed or hay so received by such railway company. *Id.* sec. 5943.

## DECISIONS AFFECTING WAREHOUSEMEN.

**B.***Bailment—Universal rule.*

It is the universal law of bailments that where the bailment is for the benefit of both parties, the bailee is required to exercise ordinary care and is liable for ordinary negligence. *U. P. Ry. Co. v. Rollins*, 5 Kan. 167; *L. L. & G. R. R. Co. v. Maris*, 16 Kan. 333.

*Duty of warehouseman on receipt of consignment—Specific directions by depositor.*

If a consignment of property is made to a warehouseman, with specific directions as to how it is to be held or disposed of, under ordinary circumstances the warehouseman must either refuse to accept the consignment, or comply in substance with the instructions of the consignor. *Kansas Elevator Co. v. Harris*, 6 Kan. App. 89.

*Delivery—Must deliver within a reasonable time after demand.*

In an action against a warehouseman for conversion of grain stored with him, it was shown that he failed to deliver the same on demand, although he did not refuse to deliver and, in fact, continually promised to do so. It was urged in his behalf that he had not refused to deliver, in this connection the court *held* that a person cannot, by promising to perform his legal duty and failing to do so, avoid liability. And that the defendant in this case was in no better position than if he had notified the plaintiff that he did not intend to comply with his demand. Upon demand being made of a bailee, he must make delivery within a reasonable time thereafter. *Id.*

*Bailee cannot dispute bailor's title.*

A bailee cannot set up title in himself to defeat the claim of his bailor. *Thompson v. Williams*, 30 Kan. 114.

*Conversion—Evidence—Misjoinder of parties and of causes of action.*

The several parties plaintiffs, brought a joint action against

the defendant warehouseman and also made defendant the sheriff who had attached the grain deposited in the defendant's warehouse (in an action brought by a bank against the warehouseman), the bank being also made a party defendant. Subsequent to the attachment, the warehouseman issued an instrument to the several plaintiffs in which it was stated that the grain held for them did not belong to the warehouseman although it had been attached in an action against him, it being further stated in such instrument that the warehouseman thereby sold to the several plaintiffs their *pro rata* interest in the grain remaining in the warehouse. It appeared that the grain had been deposited by the plaintiffs at different times and in every instance but one the contract of bailment had been oral. The defendant demurred on the ground that there was a misjoinder of parties and also a misjoinder of causes of action. A judgment was given for the plaintiff pursuant to very conflicting findings by the jury. It was *held* on appeal, that the findings indicate that the wheat was deposited for bailment and not for sale and therefore the plaintiffs had no joint cause of action and that the joint verdict in their favor could not be upheld. *Central State Bank et al. v. Walker et al.*, 7 Kan. App. 748.

*Board of trade—Right of inspection of grain.*

The Kansas City Board of Trade brought an action praying that an injunction be granted against the Argentine Board of Trade and its officers, to restrain them from licensing inspectors of grain. It alleged that there were two warehouses in the vicinity of the defendant which were regularly inspected by deputy inspectors appointed by the complainant. It was alleged in the answer that the defendant was duly incorporated and that its deputy inspectors were appointed in compliance with the laws of the state and the rules of the grain inspectors, which rules the complainant was and had been continually violating. The defendant prayed that the petition of the complainant be denied and further that the complainant be permanently enjoined from collecting or attempting to collect any fees for the inspection of grain in the vicinity of Argentine, and from violating or interfering with the defendant's exercise and enjoyment of its exclusive rights to inspect grain in its

immediate vicinity. The reply filed by the complainant denied the averments of the answer and insisted upon its right to inspect grain in the vicinity of Argentine. The case was submitted to the court on the pleadings, except that the plaintiff withdrew all demand for relief prayed for in its petition. The court found for the plaintiff and that the defendant board of trade was not entitled to the relief prayed for in its answer, and the injunction was denied. On appeal the case was affirmed, the court holding that the defendant could not invoke injunction unless its private rights were being invaded by the plaintiff, and no other remedy existed. That the defendant could not assume the duties and responsibilities of the state and the public prosecutor of protecting public interests and securing the punishment of warehousemen who violated the provisions of the statute. If the plaintiff board and its officers were violating the law, the state must interpose by an appropriate proceeding to prevent the unlawful exercise of the power. *Jones v. Board of Trade of Kansas City*, 52 Kan. 95.

## H.

### *Storage charges—Tender necessary—Replevin.*

Where the defendant bailee stated to a third party that he would not deliver the property bailed even to his bailor upon payment of charges due, and it appeared that such third person was acting without authority conferred upon him by the bailor when he made an offer to pay the charges, it was held that this was not a tender such as is required before action of replevin brought. *Brown v. Holmes*, 21 Kan. 687.

## I.

### *Commingling of goods—if without authority constitutes conversion.*

An instruction to the jury that if they found that the contract of the parties was that the grain of the plaintiff was to be separately binned and the identical grain be redelivered, that a mingling of the grain with other grain, although of like quality, constituted a conversion for which the warehouseman was liable, held to be correct. *Kansas Elevator Co. v. Harris*, 6 Kan. App. 89.

**M.**

*Pledge—Bailee has no right to pledge to secure personal indebtedness.*

Where a bailee is in possession of property for the purpose only of bailment, he is not authorized to pledge the same to secure a personal debt due from him. Therefore, the owner has the right to recover the possession of the property so pledged. In order to acquire title to property, it must be purchased from one who is the owner thereof or one authorized to sell the same and the same rule applies in regard to pledge. *Branson v. Heckler*, 22 Kan. 610.

*Loss by fire—Not liable unless negligence be shown.*

A carrier holding goods in capacity of warehouseman *held* not responsible for loss occasioned by fire in the absence of negligence. *L. L. & G. R. R. Co. v. Maris*, 16 Kan. 333; *Union Pacific Railroad Co. v. Moyer*, 40 Kan. 184; *Kansas City, Ft. Scott & M. R. R. Co. v. Patten*, 3 Kan. App. 338.

**O.**

*Measure of damages.*

Where corn, delivered by bailee to his bailor, is of inferior quality to that deposited and the bailor accepts the same, the measure of damages is the difference between the value of the corn delivered and that deposited. *Kansas Elevator Co. v. Harris*, 6 Kan. App. 89.

**Q.**

*Warehouse receipts—Evidence—When parol evidence receivable.*

A mere receipt may be contradicted or varied by parol but if it is more than that and constitutes a contract of bailment between the parties it cannot be varied by such testimony. *Thompson v. Williams*, 30 Kan. 114.

**R.**

*Bill of lading—What exemptions valid.*

While a provision in a bill of lading, or contract between the shipper and carrier, that the latter will not be liable beyond a certain sum expressed therein, may be valid, to limit the liability of the carrier as an insurer, a condition of this character

which seeks to cover the negligence of the carrier is void. *K. C. St. J. & C. B. R. R. Co. v. Simpson*, 30 Kan. 645; *Railroad v. Moyer*, 40 Kan. 184.

*Bill of lading—Effect of transfer.*

The transfer of a bill of lading passes title to the property represented thereby, but its transfer only gives with it such rights as the party in possession of the goods could transmit by an actual delivery of the goods themselves. *Branson v. Heckler*, 22 Kan. 610.

*Same—Transfer.*

Property may be transferred by assignment of the bill of lading representing same. *Means v. Bank of Randall*, 146 U. S. 620; *Halsey v. Warden*, 25 Kan. 128.

*Same—Railroad liable if duplicate bill of lading issued.*

Where a railroad company issued bills of lading for a part of the consignment and also issued one bill of lading for the entire consignment without cancelling those first issued, and one of such former bills of lading came into the hands of a third person without knowledge, it was held that the railroad was estopped to deny that the bill of lading was binding and that it was liable thereon. *Wichita Savings Bank v. Atchison, etc., R. R.*, 20 Kan. 519.

## CHAPTER XVII.

## KENTUCKY.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Warehousemen—Who deemed :**

Any person or corporation who shall receive cotton, tobacco, pork, grain, corn, wheat, rye, oats, hemp, whiskey, coal, or any kind of produce, wares, merchandise, commodity, or any other kind or description of personal property or thing whatever in store, or undertake to receive or take care of the same, with or without compensation or reward therefor, shall be deemed and held to be warehousemen. Kentucky Stats. 1899, sec. 4768.

**Above section construed :**

The person who issues a warehouse receipt, within the meaning of the above act, must be a person regularly engaged in the business of warehousing. *Mechanics' Trust Co. v. Dandridge*, 18 Ky. L. R. 625.

**Receipt to be given for articles :**

Every warehouseman receiving anything enumerated in the preceding section shall, on demand of the owner thereof or the person from whom he receives the same, give a receipt therefor, setting forth the quality, quantity, kind and description thereof, if known, and which shall be designated by some mark, and which receipt shall be evidence in any action against said warehouseman. *Id.* sec. 4769.

**Receipts negotiable and transferable :**

All receipts issued by any warehousemen as provided by this chapter shall be negotiable and transferable by indorsement in blank, or by special indorsement, and with like liability as bills of exchange now are, and with like remedy thereon. *Id.* sec. 4770.

**Receipt not to issue unless goods in warehouse :**

No warehouseman, or other person or persons, shall issue any receipt or other voucher for any goods, wares, merchandise, produce or other thing enumerated in section four thousand seven hundred and sixty-eight of this article, or for any other commodity or thing, to any person or corporation, unless such goods, wares, merchandise, produce, property, commodity or thing shall have been *bona fide* received into possession and store by such warehouseman or other person, and shall be in store and under his control, care and keeping at the time of issuing such receipt. *Id.* sec. 4771.

**Receipt not to issue as security unless goods are in possession—Liens stated :**

No warehouseman or other person shall issue any receipt or voucher upon or for any goods, wares, merchandise, produce, commodity, property, or other thing, of any description or character whatever, to any person or corporation, as security for any money loaned or other indebtedness, unless such goods, wares, merchandise, produce, commodity, property or other thing so receipted for shall be, at the time of issuing such receipt or voucher, the property of the warehouseman and actually in store and under his control, and if there be a lien on the property, then the character and extent of the lien shall be fully set forth and explained in the receipt or voucher. *Id.* sec. 4772.

**Duplicate receipts not to be issued :**

No warehouseman or other person shall issue any receipt or other voucher for any goods, wares, merchandise, produce or other things enumerated in section four thousand seven hundred and sixty-eight of this article, whilst any former receipt for any such goods, wares, merchandise, produce, commodity, property or thing as aforesaid, or any part thereof, shall be outstanding and uncancelled. *Id.* sec. 4773.

**Property receipted for not to be sold or incumbered without consent :**

No warehouseman or other person shall sell or incumber,

ship, transfer, or in any manner remove beyond his immediate control, any goods, wares, merchandise, produce, commodity, property or chattel for which a receipt or voucher shall have been given without the written consent of the person or persons holding such receipt, and the production of the receipt. *Id. sec. 4774.*

**Penalty for violation of this article :**

Any warehouseman or person who shall willfully and knowingly violate any of the provisions of this article shall be deemed a cheat and swindler, and subject to indictment, and, upon conviction, shall be fined in any sum not exceeding five thousand dollars, or shall be imprisoned in the penitentiary not less than two nor more than five years, or both so fined and imprisoned, in the discretion of the jury ; and every person aggrieved by the violation of any of the provisions of this article shall have and maintain an action against the person or corporation violating any of the provisions of this article to recover all damages, immediate, consequent, legal and extraordinary, which he or they may have sustained by reason of such violation as aforesaid, whether such person may have been convicted or not. *Id. sec. 4775.*

**Above section construed—Indictment under this act :**

For necessary statements to be contained in an indictment of a warehouseman under this act, see *Comm. v. Mason*, 82 Ky. 256.

**Receipts—Pledgee may dispose of :**

When any receipt or voucher shall have been issued as provided by this article, and used or pledged as collateral security or otherwise for the loan of money, the bank or person to whom the same may be pledged, hypothecated or transferred shall have power and authority to sell the same, and transfer title thereto in such manner and on such terms as may be agreed upon in writing by the parties at the time of making the pledge. *Id. sec. 4776.*

**Register to be kept by warehouseman—What it shall show :**

Warehousemen shall keep a register, in which shall be re-

corded a list and description of all property which may be stored in their warehouses, and the name and residence of the owner, if known, and the time when the same was received, and the amount of charges thereon. *Id.* sec. 4777.

#### **Sale of property to pay storage—Notice :**

Any property in a warehouse upon which the charges have not been paid for twelve months after the same have become due, unless otherwise provided by contract, the warehouseman may sell such property, or enough thereof to pay the charge, at public auction, at the warehouse or at the courthouse door of the county in which the warehouse is situated. Before any such sale shall be made, the warehouseman shall cause the sale of the property to be advertised for not less than twenty days before the day of the sale, by printed notices posted at the door of the courthouse of the county, and in three or more public places in the county where the sale is to take place, and by having such notice published at least once a week for at least three weeks in a newspaper of general circulation in the county where the warehouse is situated. Such notice shall contain the day and place of sale, a description of the property to be sold, if known; if not, a description of the package in which it is contained, the amount of charges and the name and place of residence of the owner, if known; and the warehouseman, at least ten days before the day of sale, shall mail to the owner a notice of the time and place of sale, with a description of the article to be sold and amount of charges. *Id.* sec. 4778.

#### **Proceeds of sale—How disposed of :**

The warehouseman, from the proceeds of the sale, shall pay all the necessary charges and costs of the sale, and shall hold the overplus, if any, subject to the order of the owner, and shall, immediately thereafter, mail to the owner thereof a notice of said sale, amount due him, if his place of residence be known; and at any time within twelve months after such sale, upon the demand of the owner, the warehouseman shall pay the same to him. All such sums which may be in the hands of the warehouseman, not claimed by the owner for twelve

months after such sale, shall be paid into the State Treasury, which shall be held for a period of two years, subject to the order of the owner or his representatives, upon he or they making satisfactory proof of the rightful ownership of same. *Id.* sec. 4779.

**Common-law liability cannot be restricted :**

It shall be unlawful for the owners, operators or controllers of any warehouse of the kind herein contemplated to make any contract restricting or limiting their common-law liability for goods stored. *Id.* sec. 4780.

**Grain warehouses — Public granaries, elevators, warehouses defined:**

Public grain elevators, warehouses and granaries in this commonwealth shall embrace those in which grain is stored, inspected, classified and sold. *Id.* sec. 4781.

**License procured from county clerk—Revocation of :**

The proprietor, lessee or manager of any public grain warehouse shall, before transacting any business therein, procure from the clerk of the county court a license permitting him to transact business of such a warehouse, which license shall be issued by the clerk of said court, on a written application, setting forth the location and name of such warehouse, and the name of each person interested as owner or principal in the management thereof; if the warehouse be owned or kept by a corporation, its name and those of its president, secretary and treasurer. This license shall be granted upon the payment of a fee of one dollar to the clerk, and shall be recorded in the bond and power of attorney book in the clerk's office. It shall be revocable by the circuit court of the county upon a summary proceeding before that court upon written complaint of any person setting forth the particular violation of law, and on satisfactory proof, to be taken as may be directed by the court. *Id.* sec. 4782.

**Bond to be executed—Terms of—Action on :**

The person receiving a license shall file a bond in the county clerk's office with good sureties, to be approved by the court,

conditioned for the faithful performance of his duty as a public grain warehouseman, and his compliance with the laws relating thereto. Suit may be brought on such bond by any person injured by the violation of this law, or by the non-performance of any of the warehouseman's duties. *Id.* sec. 4783.

**License from city not dispensed with—Penalty for doing business without :**

The license herein provided for shall not dispense with the obtaining from year to year such license as any city may lawfully require under its charter for the purpose of taxation. Any one transacting the business of a warehouseman without first procuring a license, as herein provided, or continuing such business after such license is revoked (except by delivering property previously stored), shall be fined, on conviction, in the sum of one hundred dollars for each day such business is carried on, and the court revoking a license may adjudge that no new one shall be granted to the person holding it, or to any of them, within one year from the time the same may be revoked. *Id.* sec. 4784.

**Grain—Duty of warehousemen concerning :**

It shall be the duty of every such warehouseman to receive for storage any grain that may be tendered to him, without making any discrimination between persons, such grain in all cases to be inspected and graded by a duly authorized inspector, and to be stored with grain of a similar grade received at the same time, as near as may be. In no case shall grain of different grades be mixed together while in store ; but if the owner or consignee so requests, his grain may be kept by itself in a separate bin. If a warehouse receipt be issued for grain so kept separate, it shall state on its face that it is in a separate bin. Nothing in this section shall be so construed as to require the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where the warehouse is necessarily closed. *Id.* sec. 4785.

**Receipts issued for grain—Form of :**

On application of the owner or consignee of grain stored in

such a warehouse, and the charges of inspection being paid, the warehouseman shall issue to the person entitled thereto a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned has been received in store, to be received with other grain of like grade and of about the same time of receipt, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and the payment of the proper charges for storage. All warehouse receipts for grain issued from the same warehouse shall be consecutively numbered, and no two receipts shall bear the same number except in case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." If the receipt was received from railroad cars, the number of each car shall be stated upon the receipt, with the amount it contained ; if from steamboat or other vessel, the name of the craft ; if by team or by other means, the manner of its receipt shall be stated. On delivery of grain from store against receipt, such receipt shall be plainly marked across its face with the word "Cancelled" and the name of the person cancelling the same, and shall thereafter be void, and not again be put in circulation. *Id.* sec. 4786.

#### **Receipt to issue only for grain actually delivered :**

No warehouse receipt shall issue, except on the actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipt, nor for a greater quantity of grain than was received. Where part of the grain represented by the receipt is delivered out of store, a new receipt may be issued for the remainder, but it shall bear the same date as the original and show on its face that it is balance of the original number, and the receipt on which part has been delivered shall be cancelled. When it is desired to divide one receipt or to consolidate two or more into one, this may be done with the warehouseman's consent, and the original receipts may be cancelled; but the new ones

must show on their face that they have proceeded from such division or consolidation, together with the numbers and dates of the old receipts. *Id.* sec. 4787.

#### **Receipt not to effect legal liability :**

No grain warehouseman can, by any proviso in the receipt or in any otherwise, restrict the liability put upon him by law. *Id.* sec. 4788.

#### **Grain to be delivered upon presentation of receipt—Penalty :**

Upon presentation of the receipt, properly indorsed, and tender of charges, the quality of grain therein named shall be at once delivered to the owner, and no storage can be charged after demand made; and for any delay in delivery beyond the time required with due diligence, care and prudence, the warehouseman shall be liable for damages which, at the option of the party injured, may be assessed at one cent per bushel for every day of neglect or refusal to deliver. *Id.* sec. 4789.

#### **Statements—Posting and delivery of to registrar :**

Each grain warehouseman shall, on every Tuesday, post in his office a statement of the amount of each kind and grade of grain on store in his warehouse at the close of business hours of the preceding Saturday, and shall furnish daily to a registrar of warehouses, hereinafter provided for, if there be one appointed for the city or county in which the warehouse is situated, a statement of all the receipts and deliveries and of the issual and cancellation of receipts of the day, together with any other information that may be needed for keeping a true and faithful record of the state of the warehouse. If there be no registrar, he shall post, as provided in this section, a statement of the receipts and deliveries, and of the issue and cancellation of receipts of the week ending with such Saturday. *Id.* sec. 4790.

#### **Inspector, weigher and registrar—Appointment—Removal—Qualifications—Compensation :**

The commissioner of agriculture shall appoint an inspector, weigher and registrar for the warehouses in the city, and fix

their duties, the amount and kind of bond to be given by them, and their fees, which shall be paid by the seller, and the board of trade shall, at least once in each year, establish standard grades of the various kinds of grain by which the inspectors shall be governed in their inspection; but any warehouseman, seller or buyer, or other person in interest, may, on summary complaint to the circuit court of the county, obtain a reduction of the fees, if, in the opinion of that court, they are exorbitant. And the same court shall, upon complaint of malfeasance or neglect, remove any inspector, weigher or registrar, and declare him incompetent for reappointment, the proceedings being as near as may be similar to those for vacating an office. No member of the board of trade or person interested in any warehouse shall be appointed inspector, weigher or registrar, nor shall any inspector, weigher or registrar have stored or offer for sale, in any warehouse under his supervision, any commodity owned by him or in which he is directly or indirectly interested, nor shall he be a purchaser at any sale made by the warehouse of any commodity inspected, weighed or registered by him. No person shall be appointed inspector, weigher or registrar unless he be a citizen of the state of Kentucky, has attained the age of twenty-five years, and has been a resident of the city for which he has been chosen at least one year next preceding his appointment. *Id.* sec. 4791.

#### **Rates and charges to be posted semi-annually :**

Every such warehouseman shall, before receiving any grain on store and thereafter within the first week of every January and July, publish his rates of storage and charges for receipts and deliveries, by posting them in his office and in the rooms of the board of trade, if there be any in a city situated in the same county as the warehouse, and shall not increase them during the intervening time, nor shall any subsequent change of rates apply to grain previously received in the warehouse. *Id.* sec. 4793.

#### **Inspector and weigher—When appointed by fiscal court—Qualifications—Bond—Fees—Term of office :**

In all cities and counties where there are grain warehouses,

and where there is no board of trade, it shall be the duty of the fiscal court of the county to appoint an inspector and weigher for said warehouses, who shall file a bond in the county clerk's office, with good sureties, to be approved by the court, conditioned for the faithful performance of his duty as such inspector and weigher, on which suit may be brought by any person injured by the violation of such duty. Said inspector and weigher shall have the inspection and weighing of all commodities stored in said warehouses. The fiscal court of the county shall fix the fees of said inspector and weigher, which shall be paid by the seller. No person interested in any warehouse shall be appointed an inspector, weigher or registrar; nor shall any inspector, weigher or registrar have stored or offered for sale in any warehouse under his supervision any commodity owned by him or in which he is directly or indirectly interested. Nor shall he be a purchaser at any sale made by the warehouse of any commodity inspected, weighed or registered by him. No person shall be appointed inspector and weigher unless he be a citizen of the state of Kentucky, has attained the age of twenty-five years, and has been a resident of the county for which he has been chosen at least one year next preceding his appointment. Said inspector and weigher shall be appointed for the term of two years, and until his successor is appointed and qualified. *Id.* see. 4793.

**Fire or injury to grain—When warehouseman not liable—Duty of—Notice to owner:**

No public warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care be exercised to protect and preserve the same, nor for loss or damage by heating, if he has exercised due care in handling and storing the grain, and the heating resulted from causes beyond his control. To prevent injustice from heating, it shall be the duty of the warehouseman, as nearly as possible, to deliver out grain of each grade in the order of time in which it was received. In case, however, that a warehouseman shall discover that any part of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same (provided it is not stored in a

separate bin as above provided for), he shall, by notice published in a daily newspaper of Louisville, or in the county where the warehouse is situated, if there be one, and posted at the board of trade rooms, if there is a board of trade in the city where the warehouse is located, or by written notice to the person to whom the warehouse receipt was issued, if known, of its actual condition, as near as he can ascertain it, state the kind and grade of grain, and the bin in which it is stored; and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers, amounts and dates of each, which receipts shall be those of the oldest dates then in circulation or uncancelled, the grain represented by which has not previously been declared or received for as out of condition; or if the grain longest in store has not been received for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, and the amount of it; and the enumeration of receipts and identification of grain so discredited shall embrace, as near as may be, so great a quantity of grain as is contained in such bins; and such grain shall be delivered upon the return and cancellation of the receipts, and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act of neglect, the effect of which is to depreciate property stored in the warehouse under his control, shall be held responsible as at common law, or upon the bond of such warehouseman, and, in addition thereto, the license of such warehouseman shall be revoked. In case the grain declared out of condition, as herein provided for, shall not be removed from store by the owner thereof within two months from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice in a daily newspaper of Louisville, or of

the county where the warehouse is situated, if there be one. *Id. sec. 4794.*

#### **Grain of different qualities not to be mixed :**

It shall not be lawful for any public warehouseman to mix any grain of different grades together, or to select different qualities of the same grade for the purpose of storing or delivering the same, nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain while in his possession or custody with a view of securing any profit to himself or any other person; and in no case, even of grain stored in a separate bin, shall he be permitted to mix grain of different grades together while in store. He may, however, on request of the owner of any grain stored in a private bin, be permitted to dry, clean or otherwise improve its condition or value of any such lot of grain; but in such case it shall only be delivered as such separate lot, or as the grade it was originally when received by him, without reference to the grade it may be as improved by such process of drying or cleaning. Nothing in this section, however, shall prevent any warehouseman from moving grain while within his warehouse for preservation or safe-keeping. *Id. sec. 4795.*

#### **Inspector or weigher—Penalty for neglect :**

Any duly authorized inspector and weigher of grain, who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty or the improper performance of any duty as such inspector of grain, and any person who shall improperly influence any inspector of grain in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor and, on conviction, shall be fined in a sum not less than one hundred dollars nor more than one thousand dollars, in the discretion of the jury, or shall be imprisoned in the county jail not less than three nor more than twelve months, or both, in the discretion of the jury. *Id. sec. 4796.*

#### **Law—Copy of this to be posted :**

All proprietors or managers of public grain warehouses shall

keep posted up at all times, in a conspicuous place in their business offices, and in each of their warehouses, a printed copy of this act. *Id.* sec. 4797.

### **Tobacco warehouses—Who are warehousemen?**

All persons receiving in this commonwealth leaf tobacco for storage and sale at public auction, for which they charge commission or fees for their services, are declared public warehousemen. *Id.* sec. 4798.

### **Duties of warehousemen—Weighing and marking casks:**

That hereafter warehousemen storing and selling leaf tobacco in this state shall carefully and correctly weigh, or cause to be weighed, every hogshead, box or bale of tobacco which may be sent to such warehousemen for storage and sale on the day same is to be sold. They shall mark, or cause to be marked, the gross weight distinctly on the head of each hogshead, box or bale, and on each sample card, and enter the same in sample book, and after the tobacco is stripped, they shall take the exact tare weight of each cask in which the tobacco has been prized ; and after each hogshead, box or bale of tobacco has been sold, the proprietor shall settle with the seller according to the net weight, including the sample, after deducting the exact tare. *Id.* sec. 4799.

### **Above section construed :**

The settlement with the customer must be actual, and the action must be brought by the "party aggrieved." *McMasters v. Burnett*, 92 Ky. 358. See also *Murrell v. Citizens Bank*, 19 Ky. L. R. 693.

### **False weights—Mutilating samples—Penalty—Liability:**

If any person or persons shall make a false or fraudulent weight of such tobacco, or shall purposely alter or mutilate any sample before the hogshead, box or bale it represents has been sold, or alter the weight marked thereon, or record other weights on the warehouse books than the weights marked thereon, such persons shall be deemed guilty of a misdemeanor and fined in any sum of not less than twenty-five nor more than one hundred dollars, in the discretion of the court or jury try-

ing the case, and in addition, shall be liable to the party aggrieved in damages for any and all loss they may have sustained. *Id.* sec. 4800.

#### **Commissions—Compensation :**

That hereafter warehousemen and commission merchants engaged in selling leaf tobacco at public auction, shall receive as commission or compensation therefor two dollars per hogshead from the owner hereof or his agent. *Id.* sec. 4801.

#### **Rejections—Fees on resale :**

That in the event the sale of any hogshead of tobacco is rejected, and a resale is made by the same warehouseman or in the same warehouse, no greater sum than one dollar and fifty cents per hogshead shall be charged as fees or compensation for such resale, and no additional charge shall be made for weighing, nor device resorted to so as to increase the price for selling to a greater amount than is in this act provided. *Id.* sec. 4802.

#### **Commissions for paying money to seller not allowed :**

That it shall be unlawful for any warehouseman or commission merchant to directly or indirectly charge the seller or owner anything, by way of commission or otherwise, for paying to him the money for which his tobacco is sold. *Id.* sec. 4803.

#### **Hypothecating forbidden—Exception :**

That it shall be unlawful for any warehouseman to hypothecate or pledge any tobacco shipped to or stored with him, or issue any warehouse receipts for any tobacco so shipped or stored, without the written consent of the owner of said tobacco; and if he does so without the written consent of the owner, said pledge or receipt shall be null and void: *Provided,* That nothing herein contained shall prevent any warehouseman or commission merchant from hypothecating or pledging or issuing receipts to the extent of any advancements they may have made to the owner of said tobacco on same. *Id.* sec. 4804.

**Reclamations—When to be made :**

That claims for reclamation shall be made in ninety days after sale, unless the tobacco is exported to foreign countries, then the reclamation must be made within six months after the sale, and if not done within said time, the claim shall be barred by limitation. *Id. sec. 4805.*

**Nesting and side-prizing—Penalty :**

That if any person shall nest, side-prize or fraudulently prize any leaf tobacco, such person so offending shall be deemed guilty of a misdemeanor, and upon indictment and conviction in the circuit court of the county in which said offense is committed, shall be fined not less than twenty-five nor more than one hundred dollars, in the discretion of the court or jury trying the case, and every hogshead, bale or box so prized shall constitute a separate offense. *Id. sec. 4806.*

**Liability of warehousemen—Evidence :**

That the proprietor of any warehouse shall, for any violation of the provisions of the nine proceeding sections, be liable to the party aggrieved thereby in the sum of not less than twenty-five and not more than one hundred dollars, and on the trial, the bills, accounts, statements of sale rendered by said warehousemen shall be *prima facie* evidence of guilt. *Id. sec. 4807.*

**Additional penalties and liabilities :**

That any person guilty of nesting, side-prizing or otherwise fraudulently prizes leaf tobacco, in addition to penalties denounced in section four thousand eight hundred and six of this act, shall be liable to the party aggrieved in such damages as he may have sustained, to be recovered in any court having jurisdiction in the county where said tobacco is nested, side-prized or fraudulently prized. *Id. sec. 4808.*

**Rejections—When permitted fees :**

If the sale of any tobacco is rejected by either the buyer or seller, the party rejecting shall only be required to pay the fee for the hogsheads, bales or boxes rejected by him: *Provided, however,* That the buyer shall not be permitted to reject

any hogshead, box or bale of tobacco unless the seller shall first have rejected, and then only an equal number of boxes, bales or hogsheads as the seller may have rejected. *Id.* sec. 4809.

**Combination to control or interfere with bidding unlawful :**

That it shall be unlawful for any tobacco warehousemen, corporation or individuals to combine together, by any rule, by-law or otherwise, for the purpose of controlling, or in any way interfering with, the free and unrestricted right to bid on or to purchase leaf tobacco offered for sale at public auction at any warehouse or place of sale where tobacco is sold by such warehousemen for others in this commonwealth. *Id.* sec. 4810.

**Preventing persons from bidding—Unlawful :**

That it shall be unlawful for any organization or corporation under the laws of this state to prohibit any of its members or others from bidding on or purchasing leaf tobacco at any warehouse that now exists or may hereafter be organized or established in this commonwealth. *Id.* sec. 4811.

**Sales to be free and open :**

That all sales of leaf tobacco at public auction in this state shall be free and open to all responsible bidders. *Id.* sec. 4812.

**Discrimination between purchasers forbidden :**

That all tobacco warehousemen selling leaf tobacco in this state shall make no distinction or difference between purchasers as to charges, samples, warranty or otherwise, whether said purchasers be members of the tobacco exchange or not. *Id.* sec. 4813.

**Penalties for violation of four preceding sections :**

Any warehouseman, agent, manager, corporation or organization who shall violate any of the provisions of the four preceding sections shall be guilty of a misdemeanor, and shall, upon trial and conviction in any court of competent jurisdiction, be fined for each offense in any sum not less than twenty-five dollars nor more than one hundred dollars, in the discre-

tion of the court or jury trying the case and, in addition, shall forfeit all their corporate rights and privileges under the laws of this state. *Id.* sec. 4814.

**Distiller, who is, in meaning of this section :**

That every person (firm, joint stock company or corporation) who produces distilled spirits, or who brews or makes mash, wort or wash, fit for distillation, or for the production of spirits, or who by any process of evaporation separates alcoholic spirits from grain, molasses, or fruit, or any other substance fermented, or who making or keeping mash, wort or wash, has also in his possession or use a still, is within the meaning of this act a distiller. *Id.* sec. 2572a.

**Warehouse receipts to be issued by distiller—Penalty:**

That no person, firm or corporation shall issue or sign any warehouse receipt or substitute for such receipt on whiskey stored in a distillery bonded warehouse in this commonwealth, except the distiller, and any person other than the actual owner and operator of a distillery, who shall issue or sign any warehouse receipt or substitute therefor in violation of section two of this act, shall be guilty of a felony, and, upon indictment and conviction, be confined in the penitentiary for a period of time not less than two nor more than ten years in the discretion of the jury. *Id.* sec. 2572a, subsec. 6.

## DECISIONS AFFECTING WAREHOUSEMEN.

### A.

#### *Bailment and sale—Mixing of grain.*

Where a party deposits his grain for storage merely and it is mixed with other grain he does not part with his title—there is no sale but merely a bailment. *Ferguson, Jr., Assignee, v. Northern Bank of Kentucky*, 14 Bush. 555; *Moss v. Meshew*, 8 Bush, 187; *Newcomb, Buchanan & Co. v. Caball*, 10 Bush, 460; *May v. Hoaglan*, 9 Bush, 171; *Crawford v. Smith*, 7 Dana, 59; *Jenings v. Flanagan*, 5 Dana, 217.

### B.

#### *Warehouseman's authority and liability commences with the reception of goods.*

A warehouseman has no interest in, or power over goods, nor liability for the same, until they are actually received by him. *Jefferson R. R. Co. v. White*, 6 Bush, 251.

#### *Ordinary care—Liability for goods stolen.*

Nine hundred barrels of salt were stored and two hundred and forty of them stolen at ten different times during a period extending over a month. *Held* the warehouseman was liable, not having used ordinary diligence to preserve the salt. *Cheno-with & Co. v. Dickinson & Shrewsberry*, 8 B. M. 156.

#### *Damages against warehouseman for violation of warehouse law—Res judicata.*

The plaintiff bank brought an action against the defendant on his note which he had issued to one M., a warehouseman, M. in turn having indorsed the same to the plaintiff. To this suit the defendant set up a number of defenses by way of set-off and counterclaim, and on account of usury. The defenses were substantially allowed by the lower court with the exception of counterclaim for a large sum alleged to be due him for damages growing out of the violation by the warehouseman of the statutes regulating his duties. This action was brought on the equity side of the court, there being a mortgage on certain

property to secure the payment of the note. Later the defendant brought an action against the warehouseman for the identical cause of action alleged in his counterclaim. The trial resulted in a judgment for a small amount for him but the court, by the instructions, limited the recovery to those violations of the statute occurring prior to a certain date (why this was done does not appear on record). After this common-law suit had terminated, the defendant in the original action filed an amended answer in counterclaim in the equity suit in which he claimed damages for violations subsequent to the aforesaid date. It was *held*, on appeal, that this was error, that the proceedings in the common-law action put in issue the alleged violations of the warehousemen's act and although there had been another warehousemen's law enacted, the court ought to have controlled the action of the jury by instructions under these statutes. Had the court refused to do so, M. would have had his right of appeal. The very facts attempted to be put in issue by the amended answer and counterclaim in the equity suit had already been put in issue in the common-law action, and were either tried out before the jury or should have been. *Murrell v. Citizen's Savings Bank*, 19 K. L. R. 693.

*Warehouseman's bond—That business constituted a monopoly no defense for sureties—Effect of suspension from the exchange.*

A consignor of tobacco brought an action against G., a warehouse company, and several individuals, who had become sureties on the bond of the company that it would account for the proceeds of all sales made of tobacco consigned to it. The defendant answered and alleged that G. had been suspended from membership in the exchange and therefore that the bond given by it and the other defendants to the exchange was no longer in effect. By an amended answer the defendants alleged that the purposes for which the exchange was formed were illegal, in that they attempted to create a monopoly or trust and thus stifle competition; and, consequently, the bond given to it was, void and of no effect. The answer also contained a denial of the shipment and sale and of the indebtedness. Demurrers to all of the matters contained in the answer except that last

stated, were sustained and, by agreement of the parties, the case was submitted to the court, a jury trial being waived. Judgment was given for the plaintiff for the full amount of his claim. On appeal it was *held* that the plea of the appellants in regard to the illegal nature of the business of the exchange and in regard to the suspension of the company as a member of the exchange was not sufficient in law to relieve them of their liability as principal and sureties on the bond. That before the order of suspension could relieve the sureties from liability it would have to be shown that it was either brought to the attention of the plaintiff or that public notice thereof had been given. *Globe Tobacco Warehouse Co. v. Leach*, 19 K. L. R. 1287.

*Public warehousemen—Duty to the public—Cannot lessen their liability by changing name.*

Public warehousemen are invested with a monopoly of certain public privileges, made so as a matter of necessity, and this authorizes the exercise of legislative power over them for the public welfare. Warehousemen have assumed a *quasi-public* character under the protection of the law, and will not be allowed to exercise all the privileges that have heretofore belonged to *warehousemen*, and evade all the duties and responsibilities of the position by the passage of a resolution *declaring* that they are operating their business, not in the capacity of *warehousemen*, but as *commission merchants*. Such warehousemen are obliged, therefore, to receive from the public tobacco in store for which they can make a reasonable charge; but while this right exists it does not follow that a court of equity will undertake to grant relief by injunction where one party is as much in fault as the other. *Nash v. Page*, 80 Ky. 539; *N. D. ex rel. Stoeser v. Brass*, 2 N. D. 482, affirmed 153 U. S. 391; *Munn v. Illinois*, 69 Ill. 80, affirmed 94 U. S. 113. See also *People v. Budd*, 117 N. Y. 1, affirmed 143 U. S. 517. See *State v. Associated Press*, 159 Mo. 410.

\* *Same—Sale of goods not belonging to bailor—Effect of recording chattel mortgage.*

Where a public warehouseman, acting in the usual course of

business, received tobacco for sale and sold the same and turned the proceeds over to his customer, in the absence of any notice that he was not the owner thereof, it was held that he was not liable to the real owner although there was a chattel mortgage covering the tobacco in question duly recorded. Being a public warehouseman he assumes the obligations of serving the entire public, having no right to select his customers, provided they conform to reasonable rules and regulations. *Abernathy & Long v. Wheeler M. & Co.*, 92 Ky. 320; *Nash v. Page*, 80 Ky. 539.

*Conversion—Sale by bailee.*

If the bailee of property sell it to an innocent purchaser, his sale does not transfer the property to the purchaser, but the bailor may have recourse against the bailee or against the vendee. *Chism v. Woods*, Hardin, 531.

*Same—Ratification of unauthorized sale.*

Where a warehouseman sold, without authority, goods in his care and the owner received the proceeds of sale and failed to promptly disavow the same by returning the money, held the sale had been ratified. *Clay v. Spratt & Co.*, 7 Bush, 334.

*Same—What amounts to.*

The mere possession of goods received by a bailee, without any claim or interest in the chattels, in ignorance of the fact that his possession is adverse to that of the real owner, does not amount to a conversion; there must be an exercise of dominion or control over the property for the benefit of the bailee that is inconsistent with the claims of the real owner. He must assert some lien upon or have some interest in the property before there can be a conversion, in the absence of a demand and refusal. *Newcomb-Buchanan Co. v. Baskett*, 77 Ky. 658.

**H.**

*Storage charges—Paid twice—Warehouseman liable—Warehouse receipt.*

If a warehouseman issue a receipt in which it is provided that the storage charges are to be paid when the goods are de-

livered, whereas in fact the charges were paid at the time of the deposit of the goods, it was *held* that if the person to whom the receipt was transferred paid such charges that the warehouseman was liable to the original bailor for the amount paid by him. *Atherton v. Bonnie Bros.*, 9 K. L. R. 107.

*Lien—Superiority of pledgee's lien.*

A warehouseman having notice as to who was the real owner of tobacco stored with him, sold the same as the tobacco of the person to whom the same was pledged. It appeared that the owner had agreed with the warehouseman that the latter should sell the tobacco for him. In an action between the warehouseman and the pledgee for the purchase price, it was *held* that the contention of the warehouseman that he was entitled to deduct from such sum the amount which he had paid to the owner under the contract to ship the goods to him for sale could not be sustained, the lien of the pledgee being superior to that of the warehouseman. *Hare, McLeod & Co. v. Kelly*, 11 K. L. R. 309.

*Same—None for other debts.*

Neither the custody of the warehouseman nor the pledge of whiskey by delivery of the warehouse receipts gives the warehouseman or pledgee, any general lien for debts not arising from relation of warehouseman or pledgee.

The plaintiff, a warehouseman, was merely a bailee, and when the warehouse receipts were delivered to him he became a pledgee as well; but neither relation gave him a general lien to cover debts or charges not connected with his position as warehouseman or pledgee for a specific purpose. Indeed, the express agreement of plaintiff to return the whiskey when the specified debts were paid would seem to preclude a claim of a lien for debts other than those specified. *Atherton Co. v. Ives*, 20 Fed. Rep. 894.

**M.**

*Pledge—By factor—Pledgee acting in good faith—Amount of damages.*

There is no substantial difference between the pledge made by a factor and a pledge made by a pledgee. The courts while

holding that a factor has no right to pledge the goods of his principal have nevertheless allowed the amounts sought to be recovered of the innocent pledgee of the factor, to be reduced by the sums justly due from the principal to his factor. *First National Bank v. Boyce*, 78 Ky. 42.

*Pledge—By bill of lading.*

Property may be pledged by the transfer and delivery of the bill of lading representing same. *Petitt & Co. v. First National Bank of Memphis*, 4 Bush, 334; *Douglas, Receiver, v. Peoples' Bank of Kentucky*, 86 Ky. 176.

*Same—Legal title does not pass.*

To constitute a valid lien by a pledge of property, it is not necessary that the legal title should be transferred as in the case of a mortgage, but on the contrary, the title generally remains in the pledgor. *Id.*

N.

*Loss by fire—Diligence—Effect thereon of appointment of government storekeeper.*

The appointment by the Internal Revenue Department of storekeepers who are invested with the joint custody, with the warehousemen, of the warehouses and goods stored therein, does not lessen in any degree the diligence which the latter, as bailees for hire, are by the general laws required to exercise to prevent fire from being communicated to their houses or to the goods in their custody. *Macklin v. Frazier*, 9 Bush, 3.

*Same—Failure to remove goods.*

Where a fire occurred at night and warehouseman failed to remove plaintiff's whiskey, although there was an opportunity to do so, but a statute prohibited removal of spirits at any time except between sunrise and sunset, *held* it was the duty of the warehouseman to disregard this provision of the law only when the destruction of the whiskey was inevitable. *Id.*

*Misdelivery—Liable for conversion.*

In regard to delivery, the warehouseman is obliged to deliver to his bailor or in accordance with his order. Any other dis-

position of the goods intrusted to him constitutes a conversion. *Jefferson R. R. Company v. White*, 6 Bush, 251.

*Accident—There must be no negligence.*

A warehouseman or other bailee cannot, by stipulating that he will not be liable in case of loss or damage resulting from accidents, escape his liability for any loss or damage due to his negligence. *Bridwell v. Moore*, 8 K. L. R. 535.

*Burden of proof—Negligence.*

With certain exceptions such as common carrier and inn-keeper, the burden of proof of negligence is upon the bailor, and mere proof of loss is not sufficient to put the bailee upon his defense. *Power v. Brooks & Parker*, 7 K. L. R. 204; *Craigs, Admn., v. Lee*, 14 B. M. 119, distinguished.

*Evidence—Custom—Usage.*

In order to establish that a certain usage or custom exists, evidence must be received to show what has been generally done under similar circumstances and the admission of testimony as to particular acts is error. *Bridwell v. Moore*, 8 K. L. R. 535.

**O.**

*Measure of damages—Allowance of interest.*

The value of the property at the date of conversion is the true criterion, and the jury, in their discretion, may allow or refuse to allow interest. *Newcomb-Buchanan Co. v. Baskett*, 77 Ky. 663.

**P.**

*Insurance—Notice of loss.*

Warehousemen had a large quantity of tobacco in store, upon which they carried open policies of insurance. After destruction by fire they notified the owner of one of the hogsheads to advise them of the value thereof. The warehousemen received no reply to the notification and settled with the insurance company as best he could under the circumstances. It was held that this action was conclusive on the part of the owner of the hogshead and that she could not be heard to complain afterwards. *Burks v. Sawyer, Wallace & Co.*, 11 K. L. R. 762.

*Same—Custom—Effect of instructions.*

Where there was a custom among warehousemen to insure all tobacco intrusted with them, such custom will not be binding on one who receives instructions from his depositor not to insure the tobacco. This is conclusive upon the warehouseman and exonerates him from liability for failure to insure. *Cottrell v. Branin, B. & G.*, 14 K. L. R. 580 ; *Western Dist. Warehouse Co. v. Hayes*, 16 K. L. R. 763.

*Same—Effect of failure to make proof of loss within time stated in policy.*

The failure to make the proof of loss of the insured goods, within the time stated in the policy, does not work a forfeiture thereof but such proof must be made before the beginning of the action upon the policy of insurance. *Dwelling House Insurance Co. v. Freeman*, 12 K. L. R. 894.

**Q.***Warehouse receipt—Right to issue—Estoppel.*

An instruction to the jury to the effect that the jury must find, first, that the warehouseman was authorized to sell the goods in question and secondly that he was authorized to issue a receipt therefor. It was *held* that this was error, that an authorization to sell carried with it the necessary authority to issue a warehouse receipt for the goods sold. Although section 7 of the Warehouse Laws of 1869 requires a written permission from the holder of the first receipt, before the warehouseman can issue a second one, that the act did not apply to the case above. Where the holder of the first receipt had already instructed the warehouseman to sell the goods, he would be estopped to deny that the warehouseman had authority to sell and consequently the authority to issue the receipt. That the purposes of the above act are for the prevention of fraud and the encouragement of commerce ; and the statute would not be applied in a case where the effect thereof would be to the contrary. *Farmer v. Gregory & Stagg*, 78 Ky. 475 ; *Taylor v. Farmer*, 81 Ky. 458.

*Same—For his own goods.*

A warehouseman may issue a receipt for his own goods

stored in his warehouse. But warehousemen can assert no claim against such goods unless it be shown upon the warehouse receipt. *Greenbaum Bros. & Co. v. Megibben*, 10 Bush, 419 ; *Cochran & Fulton v. Ripley, Hardie & Co.*, 13 Bush, 495 ; *Ferguson, Jr., Assignee, v. Northern Bank of Ky.*, 14 Bush, 555.

*Same—Distinguishing marks.*

By act of March 6, 1869, it is required "that a warehouse receipt shall set forth the quality, quantity, kind, and description of the property it represents, and which shall be designated by some mark." It was held that the usual or known trade-mark of a firm, found on all of its property stored in a warehouse, is not a sufficient designation by marks to comply with this statute. It must be such as will enable the party to identify the particular property and to distinguish it from that of a similar kind and quality ; such is the plain purpose of the statutes. *Ferguson Jr., Assignee, v. Northern Bank of Kentucky*, 14 Bush, 555.

*Same—Notice as to unpaid purchase price—What the receipt must contain.*

A warehouse receipt for goods for which the purchase price has not been paid need not contain a statement as to the amount of the unpaid purchase price in order to protect the vendor. The receipt on its face must contain such facts as would put a person accepting the same on inquiry. *Western Bank v. Marion Co. Distilling Co.*, 9 K. L. R. 500 ; *Same v. Same*, 89 Ky. 94 ; *Pike v. Greenbaum*, 12 K. L. R. 423.

*Same—Negotiability—What a holder thereof takes.*

Although warehouse receipts are made negotiable by the law of this state, the holder of a receipt takes no better title, and stands in no better attitude, than if the goods themselves had been delivered to him. Such receipts, no matter under what section of the act of 1869 they are issued, are in lieu of, and represent the property to which they refer, and their negotiability serves only to ward off any defense which the warehouse keepers may have. *First National Bank of Louisville v. Boyce*, 78 Ky. 42 ; *Greenbaum Bros. & Co. v. Megibben*, 10 Bush, 419.

*Same—Same—Indorser's liability—Warehouse receipts are negotiable and transferable by indorsement.*

The indorser's liability is the same as that of one who indorses bills of exchange. *Cochran & Fulton v. Ripley, Hardie & Co.*, 13 Bush, 495 ; *Greenbaum Bros. & Co. v. Megibben*, 10 Bush, 419 ; *Ferguson, Jr., Assignee, v. Northern Bank of Kentucky*, 14 Bush, 555 ; *Greenbaum v. Burns*, 13 K. L. R. 267.

*Same—Negotiability—Innocent holder protected.*

A warehouseman sold whiskey and accepted the purchaser's note in payment therefor and then issued to the purchaser a warehouse receipt, in which it was stated that the whiskey was deliverable on return of the receipt and payment of storage charges. The purchaser borrowed money and gives this receipt as collateral security for the payment of the debt. In an action, by the one who had loaned the money to the purchaser, against the warehouseman, it was held that the whiskey should be sold, applying the proceeds first to the plaintiff's debt and the balance, if any, to the warehouseman for the payment of the debt due him, from the purchaser, on the purchase price and storage charges. *Greenbaum Bros. & Co. v. Megibben*, 10 Bush, 419.

*Same—Same—For goods not actually in store—Bona fide holder.*

The fact that a warehouseman has incurred a penalty, by issuing receipts for goods not in his warehouse, will not effect the validity of such receipt in the hands of one acting in good faith. *Cochran & Fulton v. Ripley, Hardie & Co.*, 13 Bush, 495.

*Same—Same—Bona fide holder.*

Where a warehouse receipt is taken for a prior indebtedness, the transferror having no right to assign the receipt, such person cannot be said to be a *bona fide* holder and thus take free and clear of all equities. *Carstairs, McC. & Co. v. Kelly*, 16 K. L. R. 64.

*Same—Same—Same—Notice as to purchase price being unpaid.*

A warehouseman who was also a wholesale liquor dealer sold a large quantity of whiskey to D., and took in payment there-

for D.'s accepted draft due in thirty days. At the time of the acceptance of the draft the warehouseman delivered to D. ten warehouse receipts representing the whiskey purchased. There was nothing stated on the receipt to show that the purchase price was unpaid, and it was therein stated that the whiskey was deliverable only upon the return of the receipt properly indorsed, and on the payment of the government and state tax and storage charges due thereon. D. sold the whiskey to plaintiff who took the warehouse receipts without notice that the purchase price was not paid. On the above stated facts, it was *held* that the plaintiff was entitled to recover, that the warehouseman having issued and given curreney to the negotiable receipts, he could not escape liability thereon at the suit of an innocent purchaser for value, without establishing by proof that the owner had actual notice that the purchase money had not been paid, and that it was the agreement that it should be paid before the whiskey should be delivered; that any other construction of it would enable the warehouseman to take advantage of his own wrong. That where a warehouseman issues such receipts he puts it in the power of the holder to treat on the face of it; he enables a holder to say, and to induce others to believe, that he has certain property which he can sell, or pledge for the loan of money. And if a warehouseman gives to the party who holds such a receipt a false credit, he will not be suffered to contradict the statement which he has made in the receipt so as to injure the party who has been misled by it. *Collins & Co. v. Rosenham*, 19 K. L. R. 1445; *McNeal v. Hill*, 1 Woll. W. (U. S.) 96.

*Same—As collateral—Goods not in warehouse—Bona fide holder.*

A warehouseman issued receipts as collateral security to one who had made a loan to him. At the time of this transaction the goods represented by the receipts were not in the warehouse. When the loan came due the same was renewed and the warehouseman issued new receipts to the lender. At this time the goods represented were actually in store. It was *held* that although the warehouseman had violated the statutes in the first instance by issuing receipts when goods represented thereby were not in his possession, this would

not deprive the lender of his rights of a *bona fide* holder without noticee, since the second receipts which he held were not in violation of the statutes. Further, that the extension of the loan was a sufficient consideration for the issuance of the new receipts. *Cochran & Fulton v. Ripley, Hardie & Co.*, 13 Bush, 495.

*Same—Same—Bona fide holder protected.*

A warehouseman sold whiskey to A, who pledged the receipts as collateral security with B, the warehouseman retaining possession of the goods. Upon default in payment by A of his debt to B, the latter became owner of the warehouse receipts. In an action between B and the warehouseman it was *held* that B's rights were superior to the claim of the warehouseman for unpaid purchase money. *Greenbaum v. Burns*, 15 K. L. R. 716.

*Same—Same—Receipt must contain distinguishing marks.*

In an action by a bank against the assignee, in insolvency, of a warehouseman for the recovery of the value of property upon which the warehouseman had borrowed money and had delivered to the bank his warehouse receipts for the same, as collateral security, it appeared that there were no distinguishing marks upon the warehouse receipts except the usual trademark of the firm; it also appeared that there was a large quantity of other goods similarly marked. The court *held* that the requirements of the act of March 6, 1869, in regard to distinguishing marks, had not been complied with, for the marks must be such as will distinguish the property represented by the receipt from other property of similar kind and quality; accordingly the judgment given for the plaintiff, in the lower court, was reversed and the case remanded. *Ferguson, Jr., Assignee, v. Northern Bank of Kentucky*, 14 Bush, 555.

*Same—As collateral—Duplicate.*

Where a warehouseman pledged with one making a loan to him, a warehouse receipt in which it was stated that the warehouseman held certain goods for a third person, it was *held* that this was a fraud on its face for the warehouseman had no

right to possess such a receipt nor to pledge the same, and that the receipt was void. *Smith v. Anderson & Co.*, 10 K. L. R. 725.

*Same—Assignee of warehousemen—Estoppel.*

It was contended that the assignee of a warehouseman was estopped to deny a sale of property stored in his assignor's warehouse. This in an action against the assignee personally for the conversion of the property, it was held that he was not so estopped, and further, that the burden of proof was on the plaintiff to show title in himself. *Ferguson, Jr., Assignee, v. Northern Bank of Kentucky*, 14 Bush, 555.

*Same—Liability.*

The assets of the warehouseman in the hands of his assignee may be reached by the holder of an ineffectual warehouse receipt issued by the warehouseman, but such assignee is not personally liable therefor. *Id.*

*Same—Duplicate of.*

A firm of distillers having decided to issue new green receipts for old yellow ones placed in the hands of their financial manager the green receipts. There were certain yellow receipts outstanding being pledged to secure a note held by a creditor. The financial manager did not take up these yellow receipts but issued new green receipts against the same whiskey to secure an indebtedness to another creditor. The note to former creditor was paid but only part of the yellow receipts returned. Held that this vested in the holder of the green receipts title to the whiskey represented by the returned yellow receipts and this so even though the returned yellow receipts were immediately pledged by the firm to obtain the cash with which to meet the check given by them to take up the note. *Block v. Oliver & O'Bryan*, 19 K. L. R. 1278.

*Same—Same—Effect of retention of receipt after payment of note—Other indebtedness.*

Under the statement of facts as set forth above where the person to whom the original yellow receipts were pledged does

not deliver all of the same upon payment of the note, it was held that the evidence would not sustain the contention that he held such receipts as bailee of the warehouseman, but that it would be presumed that he retained them as collateral security for the payment of other indebtedness due him by the warehouseman. Further, that the contention that no liability on the part of the warehouseman existed on account of green receipts, until all of the yellow receipts were surrendered and cancelled could not be sustained, and that the warehouseman was liable to the one to whom the green receipts were issued for the property represented thereby. *Id.*

*Same—Same—Counsel fees recoverable.*

Appellant recovered counsel fees from warehouseman, such expenditure being occasioned by issue of duplicate receipts by warehouseman. Held correct. *Lupe v. Anderson Distilling Co.*, 9 K. L. R. 149.

*Same—Same—Constitutes actual fraud.*

The issuance of duplicate receipts to one who takes without notice of the fact that former receipts have been issued constitutes, according to principle and authority, actual fraud which cannot be avoided by declaration of honest motives. *Taylor v. Farmer*, 81 Ky. 458; *Farmer v. Gregory & Stagg*, 78 Ky. 475.

R.

*Bill of lading—Negotiability.*

A bill of lading does not possess the characteristics of bills of exchange or other negotiable instruments placed on the footing of bills of exchange. The peculiar characteristics of these instruments rest entirely upon statute or commercial usage sanctioned by express consent. A bill of lading has neither of these to rest upon. It does not represent money, and it does not possess the characteristics of negotiable commercial paper. When it is said that a bill of lading is negotiable, it is only meant that its true owner may transfer it by indorsement, or assignment, so as to vest the legal title in the indorsee. *Douglas, Receiver, v. Peoples' Bank of Ky.*, 86 Ky. 176; *Polland v. Vinton*, 105 U. S. 7.

## CHAPTER XVIII.

**LOUISIANA.**

## LAWS PERTAINING TO WAREHOUSEMEN.

Governing the manner in which cotton-press receipts, warehouse receipts, or the receipts of other custodians of any property whatever, shall be issued, in all cases where such receipts shall or may be used or pledged as collateral security for money advanced or borrowed on faith of the property therein specified, and governing the delivery and disposal of the property for which such receipts may be issued.

*Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened:* That no cotton press, or other custodian or custodians of produce or property shall issue any receipt or other voucher for any produce, merchandise or other property, to any person or persons purporting to be the holder, owner or owners thereof, unless such produce, merchandise or other property shall have been actually received into store, or upon the premises of such cotton press, or other custodian or custodians, shall be in the store, cotton press or warehouse, or on the premises aforesaid, or under his or their control at the time of issuing such receipt.

*Be it further enacted, etc.:* That any person, firm or association who shall, or may be, or in any way become the custodians of any property, goods, products or merchandise whatever, and who may issue receipts therefor, shall not, under any circumstances, or upon any order or guarantee whatever, deliver property for which such receipts have been issued until the party or parties to whom the receipts were issued, or the legal holders thereof, shall have surrendered the same to said custodians for cancellation, and in default of a strict compliance with the provisions of this section of this act, they may be held liable by the legal holder or owner of their receipt for the market value of the property therein described as may be established

by the chamber of commerce of the city of New Orleans or any committee thereof, approved and authenticated by the president or vice president of said chamber of commerce. All warehouse receipts intended for pledge under the provisions of this act shall be paragraphed before being issued, as follows: For hypothecation in accordance with the provisions of this act.

*Be it further enacted, etc.:* That no cotton press or other custodian or custodians of produce or other property shall issue any second or duplicate receipt for any goods, wares, merchandise, grain, flour, or other produce or commodity, while any former receipt for any such goods, wares, merchandise, grain, flour, or other produce or commodity as aforesaid, or any part thereof, shall be outstanding and uncancelled, without writing across the face of the same, "duplicate," in a highly conspicuous manner. And any person who may issue warehouse receipts for any property of any kind whatsoever not actually in their possession and under their entire control, shall be and are hereby made liable for the market value of any and all property for which they may have issued such false receipts in manner as specified in foregoing section, and shall furthermore be liable to criminal prosecution as having aided and abetted in obtaining money under false pretenses.

*Be it further enacted, etc.:* That parties who may borrow money on the faith of warehouse receipts, representing property in store, shall file their affidavit with the pledgees that such property is theirs, the pledgors' personal property, or that it is the property of some party for whom the pledgor is acting as agent, factor, commission merchant, or in any other fiduciary capacity, and that said party is justly and truly indebted to the pledgor in an amount equal in value to the value of the property pledged, as specified in the warehouse receipt, for moneys paid to him, or paid by his order and for his account by the party or consignee making the pledge. The cashier of a bank or the secretary of any insurance company incorporated or working under any law in the United States or of this state is hereby authorized to administer the oath contemplated under the provisions of this act. Any deviation therefrom shall render the party or parties so deviating liable for the value of the property, or any

excess in value over and above the amount for which it may have been pledged in any manner specified in section one of this act, and to prosecution for perjury and also for obtaining money under false pretenses.

*Be it further enacted, etc.:* That the vendors' lien of five days' privilege, now allowed in commercial transactions for the payment of the purchase price, shall not be affected by the provisions of this act, except in case in which a warehouse receipt has been pledged as collateral for money borrowed. The holder of the warehouse receipt shall be considered and held as the actual owner of the property described in the receipt, and no clause of this act shall operate to the detriment or injury of the holder of a warehouse receipt, to the extent of the value of the property specified, made and issued in accordance with and under the provisions of this act; *provided*, that where the factor, agent or pledgor may have wrongfully pledged, in violation of this act, any property, the lien of the owner shall be valid even against the third holder of the warehouse receipt.

*Be it further enacted, etc.:* That should the pledgor fail to pay his pledge note, secured by warehouse receipts representing the property therein described, on the day of its maturity, the pledgee shall, on the following day after the maturity of such pledge note, notify the pledgor of same, and inform him that he may appoint one expert to act jointly with another one to be appointed by the pledgee, which expert shall examine, appraise, and sell the goods or merchandise pledged, or such an amount of the same as they may determine to satisfy the claim of the pledgee, together with costs and the usual expenses. In case of doubt the two experts already selected will be authorized to appoint a third. In the event of the pledgor refusing, or for any reason failing to appoint such expert within five days, allowing one additional day for every twenty miles that the residence of the pledgee may be distant from the residence of the pledgor, then the pledgee shall be and he is hereby authorized and empowered to appoint two experts, and they to appoint a third, all of whom shall be familiar with the value and management of the character of the merchandise involved; said experts to examine, appraise, and sell to the best possible advantage all of the prod-

uce pledged, or such an amount as may be necessary to settle the pledge note in full, together with such costs and necessary expenses as may be or have been incurred. The experts thus appointed shall proceed at once to take action and to complete their duties at the earliest practical day consistent with the usual and customary manner of selling the produce or merchandise in question, and said experts shall make their report immediately thereafter. They shall be authorized to sell at public auction, after five days' notice in a public journal published in the parish in which the pledgee resides, without legal process of any kind or description whatever; and the pledgee or holder of said warehouse receipt shall be in full and complete possession of the merchandise described in the receipt from and after the day on which the pledge note based on the merchandise may have matured; the surrender of the warehouse receipt to the custodian or custodians of the property, and cancellation of same, shall relieve and exonerate them from all further responsibility in the premises.

*Be it further enacted, etc.:* That said experts shall make a sworn statement of their proceedings and the disposition of the funds realized, and file said statement in the office of some duly qualified notary public, or in any court of record located in the parish in which the pledgee may reside. Said experts shall receive such fee as may be agreed upon, but they shall not be authorized to exact a fee in excess of the usual commissions charged, according to commercial usage, on the character of the property upon which they may have administered.

*Be it further enacted, etc.:* That all warehouse receipts as by this act provided, shall be negotiable by indorsement in blank, or by special indorsement, in the same manner and to the same extent as bills of exchange and promissory notes now are.

*Be it further enacted, etc.:* That this act shall take effect from and after its passage, and all laws or parts of laws in conflict herewith be and the same are hereby repealed. Laws, 1876, No. 72, p. 113.

**Above act construed—Owner protected where factor retains receipt in his own name and pledges the same :**

Under the above act and the other statutes of this state per-

taining to brokers, warehousemen, factors and warehouse receipts, it was held that it was not the intention of the general assembly that where a factor should be the holder of a warehouse receipt taken out by himself in his own name, that such statutes would confer upon parties the right to deal with him as owner and to absolutely ignore, under full protection of the law, the relation which the factor bore to the property and to its owner. *Holton & Winn v. Hubbard & Co. et al.*, 49 La. Ann. 715.

To amend the act No. 125 of 1880, approved April 10, 1880, with reference to corporations for works of public improvement.

*Be it enacted by the General Assembly of the state of Louisiana :*  
That section 4 of said Act No. 125 be amended and re-enacted so as to read as follows : That any railroad, plank road, turnpike, canal, elevator or warehouse company, or any company for drainage, sewerage, land reclamation and levee building, established under the laws of this state, whether under and by special or general act, may borrow from time to time such sums of money as may be required for construction, repairs or acquisition of property or franchises, and for this purpose may issue bonds or other obligations, secured by mortgage or pledge, as the case may be, of the franchises and all the property, real and personal, and incomes, revenues, contributions, and receipts of said companies, and payable in such terms and at such times and places as the board of directors, trustees, managers or commissioners may direct or designate, with power to sell, pledge or otherwise dispose of said bonds on such terms as the railroad respectively may direct or deem expedient. Laws, 1882, No. 102, p. 155.

An act to define and regulate the business of public warehouses, and the issue of public warehouse receipts; to define and punish violations of this act, and to repeal conflicting laws.

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NOTE. For an act to regulate the employment of children, young persons and women in warehouses or workshops where the manufacture of any goods whatever is carried on or where any goods are prepared for manufacturing, see act No. 43, Laws of Louisiana, 1886, p. 55.

**Formalities and qualification :**

That the proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such warehouse, shall procure from the civil district court of the parish in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of this state, which certificate shall be issued by the clerk of said court, upon a written petition setting forth the location and name of such warehouse or warehouses and the name of each person individually or a member of the firm, interested as owner or principal in the management of the same; or if the warehouse be owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated, and the said certificate shall give authority to carry on and conduct the business of a public warehouse within the meaning of this act, and shall be revocable by said court upon a summary proceeding before the court, on complaint by written petition of any person setting forth the particular violation of the law, and upon satisfactory proof, as in other cases at law. The person receiving a certificate, as herein provided for, shall file with the clerk of the court granting same, a bond to the state of Louisiana, with good and sufficient security, to be approved by said court, in the penal sum of five thousand dollars (\$5,000) conditioned for the faithful performance of his duty as a public warehouseman, and his full and unreserved compliance with all laws of the state relating to such business.

**Penalty for non-compliance :**

That any individual, member of firm, or president, secretary or treasurer of a corporation, who shall transact the business of a public warehouse without first procuring a certificate as herein provided, or who shall continue to transact any such business after such certificate has been revoked (save only that he may be permitted to deliver property previously stored in such warehouse) shall, in summary proceedings on the written petition of any person setting forth the fact, as above, and upon satisfactory proof before the court whose clerk is authorized to issue the certificates provided for in section first of this act,

be adjudged to pay to the police jury of the parish where the warehouse is situated, or to the city of New Orleans, if that be the location of the warehouse, at the discretion of the court, a sum not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), and costs of court, for each and every day such business is so carried on; and the court may refuse to renew the certificate or to grant a new one, to any of the persons whose certificate has been revoked, within one year from the time the same was revoked. But nothing herein shall be construed to interfere with, repeal or conflict with the regular license laws of the parish, city or state.

**. Receipts, how issued, etc. :**

That on application of the owner or depositor of the property stored in a public warehouse, the warehousemen shall issue over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto, which receipt shall purport to be issued by a public warehouse, shall bear date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored, and the date on which it was originally received in warehouse, and that it is deliverable upon the return of the receipt properly indorsed by the person to whose order it was issued, and on payment of all charges for storage. All such receipts shall be numbered consecutively, in the order of their issue, and no two receipts bearing the same number shall be issued from same warehouse during the same year, nor shall any duplicate receipt be issued, except in the case of a lost or destroyed receipt in which case the new receipt shall bear the same date and number as the original, and be plainly marked on its face, "Duplicate"; and, provided, that no such duplicate receipt shall be issued by any public warehouseman until adequate security be deposited with, or to the order of, said warehouseman to protect the party or parties who may finally hold the original receipt in good faith and for a valid consideration.

**Not without previous receipt of goods :**

That no warehouse receipt shall be issued except upon the

actual previous delivery of the goods into the warehouse or on the premises and under the control of the warehouseman by whom it purports to be issued, and the name of the warehouse shall invariably be specified in such receipt.

#### **Delivery to holder of receipt :**

That on the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be deliverable immediately to the holder of such receipt, but no public warehouseman who shall issue receipts for goods shall under any circumstances or upon any order or guarantee whatsoever deliver the property for which such receipts have been issued, until the said receipt will have been surrendered and cancelled, and in default of the strict compliance with the provisions of this section of this act, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall furthermore be liable to the special penalties herein provided, in addition to the existing penalty attached to the crime of obtaining money or goods under false pretenses, or aiding and abetting therein. Upon delivery of the goods from the warehouse upon any receipt, such receipt shall be plainly marked in ink across its face with the word "cancelled," with the name of the person cancelling the same, and shall thereafter be void, and shall not again be put in circulation.

#### **Limitation of liability—Prohibited :**

That no public warehouseman shall insert in any public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws of this state, excepting not accountable for leakage or depreciation.

#### **Negotiability :**

That the receipts issued against property stored in public warehouses, as herein provided for, shall be negotiable and transferable by indorsement in blank or by special indorsement, and delivery in the same manner and to the same extent as

bills of exchange and promissory notes now are, without other formality, and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property herein described, subject only to the lien and privilege of the public warehouseman for storage or other warehouse charges; provided, however, all such public warehouse receipts as shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this section; and provided, further, that no public warehouseman shall issue warehouse receipts against his own property in his own warehouse, but upon sale of such property in good faith, may issue to the purchaser his public warehouse receipt in form and manner as herein provided, which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issues of said receipt for his own goods in his own public warehouse from complying with and being subject in all respects to all the other sections and provisions of this act.

### **Penalties :**

That any public warehouseman who violates any of the provisions of this act shall be deemed guilty of a criminal offense, and upon indictment and conviction thereof shall be fined at the discretion of the court in any sum not exceeding five thousand dollars (\$5,000) or be imprisoned in the state penitentiary not exceeding five years, or both.

### **Act not applicable to private warehouses :**

That nothing in this act shall be construed to apply to private warehouses, or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws, provided, that such private receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall on the contrary bear on its face in large char-

acters, the words "Not a Public Warehouse Receipt," in addition to any form of words imposed by laws heretofore in force.

**Repealing clause :**

That all laws and parts of laws in conflict with this act be and are hereby repealed in so far as they conflict. Laws, 1888, No. 156.

Granting a special lien and privilege to persons who sell agricultural products of the United States in chartered cities and towns of this state, on said products for the space of five days after the delivery of the same; and to repeal conflicting laws.

*Be it enacted by the General Assembly of the State of Louisiana :* That any person who may sell the agricultural products of the United States in any chartered city or town of this state shall be entitled to a special lien and privilege thereon, to secure the payment of the purchase money for and during the space of five days only after the day of delivery; within which time the vendor shall be entitled to seize the same in whatsoever hands or place it may be found, and his claim for the purchase money shall have preference over all others, and especially over any warehouse privilege or claim for warehouse charges, or any privilege or claim by the holder of any warehouse receipt. If the vendor gives a written order for the delivery of any such produce and shall say therein that it is to be delivered without vendor's privilege, then no lien shall attach thereto.

*Be it further enacted, etc.:* That all laws and parts of laws, and especially any part of act No. 156 of the Legislature of 1888—approved July 12, 1888—in conflict with this act, be and the same are hereby repealed. Laws, 1890, No. 63.

An act authorizing the sale by warehousemen of goods remaining in warehouses, on which charges remain due and unpaid; to provide for the disposition of the proceeds, and to repeal conflicting laws.

That whenever any goods, wares or merchandise shall have remained on storage in any warehouse in this state, for a period of one year, and the charges thereon or storage and expenses shall have remained due and payable for a period exceeding

six months, it shall be lawful for the warehouseman to give notice in writing of thirty days to the person who has stored said goods, to pay such charges and expenses; and if the same are not paid within thirty days after giving such notice, it shall then be lawful for such warehousemen to sell said property for cash, at public auction, by a duly licensed auctioneer after having duly advertised the terms, time and place of such sale for ten days in the manner required for judicial advertisements of the sale of movables; provided that a separate advertisement of each article to be sold shall not be required, but one general advertisement shall be sufficient to authorize the sale of said property, the name or names of the parties storing the same, however, to be given.

That the aggregate proceeds of sales under such advertisement shall be applied in the first place to the payment of charges and expenses for storage and expenses for advertisement and sale; and the residue if any shall be retained by the warehouseman for the period of three months from the date of sale, and if, during the said period, the owners of any of the property sold shall present themselves, they shall be entitled to receive the proceeds of the sale of their property, less the deductions hereinbefore authorized to be made, and the balance, if any, remaining unclaimed after the expiration of three months as aforesaid shall be paid into the treasury of the state of Louisiana to the credit of the general school fund of the state of Louisiana to be disbursed in such manner as other money to the credit of the general school fund of Louisiana, and the said warehouseman shall be released from all liability on account of the property so sold.

That no warehouseman shall have the right to take the benefit of this act unless the first section of this act shall have been printed or written on the receipt given for the property.

That all laws or parts of laws, contrary to or inconsistent with the provisions of this act, be and the same are hereby repealed. Laws, 1894, No. 85.

All pledges of movable property may be made by private writing, accompanied by actual delivery; and the delivery of property on deposit in warehouses, shall pass by private assign-

ment of the warehouse receipt, so as to authorize the owner to pledge such property; and such pledge so made, without further formalities, shall be valid, as well against third persons as against the pledgees thereof, if made in good faith." Art. 3158 R. Civ. Code.

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NOTE. The charters of some cities and towns in Louisiana vest municipal authorities with certain control over warehouses located therein.

## DECISIONS AFFECTING WAREHOUSEMEN.

**B.***Warehouseman—Responsibility in general.*

It seems that a warehouseman will be held responsible for the loss of property stored, in all cases where he fails to show that the loss occurred without his fault. *Thomas v. Darden*, 22 La. A. 413.

*Same—No presumption of ownership.*

The presumption of ownership resulting from possession is not applicable to factors, brokers and other avowed agents, with respect to money or property intrusted to them for the special purposes of their vocation. *Succession of Hardy Boisblanc*, 32 La. A. 109.

*Same—Goods held subject to order of depositor.*

A depositary is bound, in the absence of any judicial proceedings, to hold the property deposited, subject to the order of the depositor, C. C. secs. 2920, 2921 and 2929. A depositary cannot therefore be held liable in damages, in the absence of fraud, for obeying the orders of the depositor. *Britton v. Aymar et al.*, 23 La. A. 63.

*Same—Failure to obey instructions—Liability.*

Failure to obey instructions in regard to goods intrusted to the care of commission merchants will cause them to incur a liability to the owners for the value thereof. *Copes v. Phelps & Co.*, 24 La. A. 562.

*Common carrier not entitled to license as warehousemen.*

Permanent storage is not incidental to railroad business, hence carrier is not entitled to a license as warehouseman under Act No. 101 of 1886, on ground that the storage of goods is incidental to its business. *State v. Southern Pac. Co.*, 52 La. A. 1822.

*Default by warehousemen—Recovery.*

The putting in default of a depositary is a prerequisite to

enable the depositor to recover, where the thing deposited has been lost or destroyed. *James v. Greenwood*, 20 La. A. 297.

*Title—Depository cannot impeach.*

A depositary cannot be permitted to introduce evidence to impeach the title of the depositor. *Graham & Anderson v. Williams*, 21 La. A. 594.

*Goods pledged by factor—Owner protected—Surrender under judicial process—Warehouseman not guarantor of the title of stored property.*

The owner of cotton shipped the same to his factor with the direction to hold it until a better price could be obtained. Without the consent of the owner, the factor stored the property and borrowed money upon the warehouse receipt therefor as collateral. The factor subsequently failed. In an action, brought by the owner, against the lender, the former obtained judgment and then possession of the property, giving bond on appeal. The appellate court affirmed the judgment of the lower court, holding that the lender, by the indorsement of the warehouse receipt to him, took only such title as the factor had, and that the pledge by the factor was wrongful and invalid as to the plaintiff. Further, that the delivery, by the warehouseman, of the property under a judicial writ was, in legal effect, a compliance with the terms of the warehouse receipt, which stated that delivery would only be made upon the return of such receipt. *Insurance Co. v. Kiger*, 103 U. S. 352.

*Conversion—Responsible for value.*

A depositary who sells sugar deposited with him and converts the proceeds to his own use is responsible to the owner for its value. *Short v. Lapeyreuse*, 24 La. 45.

*Same—Sale by depositary a theft.*

A depositary who sells the deposit commits a theft. *McGregor et al. v. Ball*, 4 La. 289.

**E.**

*Factor and principal—Nature of their relations.*

The relation between factor and principal is not the ordinary

relation between debtor and creditor. It is a relation of trust and confidence. It creates a contract in the nature of that which is known, in the civil law, as the irregular deposit. The factor is to be considered as undertaking to hold the funds confided to him by his principal as subject to his order, and to be ready to pay them over to him, deducting only his own charges and advances made in the course of his employment, and he cannot retain the funds on the ground of having paid other claims against the principal, which he had received notice from the principal not to pay. *Nolan v. Shaw & Co.*, 6 La. A. 40.

*Factors—Nature of contracts with.*

The contract implied between principal and factor, in the ordinary transaction of business, partakes, in some respects, of the nature of the contracts both of loan and irregular deposit. Their current accounts are necessarily provisional until settled, and even after settlement may be rectified by either party on account of errors or omissions, subject to which every settlement is held to be made. *Bloodworth v. Jacobs et al.*, 2 La. A. 24.

*Same—Same—Effect upon third persons.*

It was never contemplated by the lawmakers that the mere fact that a factor should be the holder of a warehouse receipt, taken out by himself in his own name, should confer upon parties the right to deal with a factor, and to absolutely ignore, under full protection, the relations which he has to the property and to its owner. *Holten & Winn v. Hubbard & Co. et al.*, 49 La. A. 715.

*Same—Pledge—Own debts.*

A factor cannot pledge for his own debts, property consigned to him, nor can he give it in payment for his own debts. *Hadwin v. Fisk*, 1 La. A. 74; *Lallande v. His Creditors*, 42 La. A. 705; *Holton & Winn v. Hubbard & Co. et al.*, 49 La. A. 715.

*Same—Same—Same—Defense.*

A factor cannot pledge goods of his principal's for his own

debts, and where the pledgee is cognizant of the ownership, he cannot in an action by the owner, avail himself of the defense that he has been misled by any act or omission of such owner. *Bonniot & Co. v. Fuentes & Co.*, 10 La. A. 70.

*Same—Same—Creditor of owner.*

A factor who holds a warehouse receipt may pledge the goods covered by the receipt, to the extent that he is a creditor of the principal. *Chambers, Holton & Winn v. Hubbard & Co. et al.*, 51 La. A. 887.

*Same—Investment of customer's funds.*

A cotton factor, who by direction of his customer, invests the latter's funds, is not responsible to him for the illegality of the investment. *Allen, West & Brush v. Wheatstone et al.*, 35 La. A. 846.

*Commission merchants—Own debt—Trustee.*

A factor or commission merchant who resides in the city of New Orleans, and who accepts a consignment from a person acting as trustee, in a state where such titles are universally recognized, cannot compensate the claim against himself for the proceeds of the articles consigned, with a debt held by him against the person from whom the trust is derived. *Bell v. Powell*, 23 La. A. 796.

**I.**

*Change of form—Property in principal.*

The product or substitute of a thing follows the nature of the thing itself, so long as it can be ascertained to be such. So the property of a principal intrusted to a factor for a special purpose is considered still to belong to the principal, notwithstanding any change of form it may have undergone, so long as it can be identified. *Bloodworth v. Jacobs et al.*, 2 La. A. 24.

**N.**

*Loss by fire—Liability—Diligence.*

A depositary is not answerable, in any case, for acts produced by overcoming force, such as fire, unless he fail to use proper diligence. *McCullom v. Porter, Thomas & Foley*, 17 La. A. 89.

*Liability for cotton unaccounted for.*

The proprietors of a cotton yard and press will be held responsible for cotton deposited in their warehouse, and which is not accounted for. *Marr et al. v. Barnes*, 1 R. 190.

*Prior and subsequent damage to goods—Burden of proof.*

Where defendant shows that cotton was damaged before he was authorized to take possession of it, it is incumbent on plaintiff to show that other damages were sustained and the extent thereof, before he can recover. *Farley, Jury & Co. v. Vanwickle & Co.*, 19 La. A. 9.

*Overpowering force—Means to preserve the goods.*

In order to avoid liability for the loss of cotton on storage, the warehouse keeper must show that the loss occurred without his fault. He cannot be relieved by showing simply that the loss occurred by an overpowering force. He must also show that he used all possible means to preserve it. *Schwartz, Kauffman & Co. v. Baer*, 21 La. A. 601; *Lery et al. v. Bergeron*, 20 La. A. 290.

*Same—Same—Insufficient protection.*

Where the defendant, the keeper of a public warehouse, received a lot of cotton on storage, and gave a receipt therefor, it is not sufficient excuse for not delivery, when demanded, for him to show that soldiers were encamped near the warehouse and that it was commonly believed that they and the freedmen were stealing the cotton; that the back door of the warehouse could easily have been forced open at night, and the cotton taken out, and then closed again, without being discovered in the daytime. *Thomas v. Darden*, 22 La. A. 413.

*Same—Depositary not liable.*

Where the depositary is not able to resist the seizure and consequent custody of deposited cotton by the authorities of the United States, he could not be held liable in damages for his failure to deliver it upon demand by depositor. *Britton v. Aymar et al.*, 23 La. A. 63; *McCullom v. Porter et al.*, 17 La. A. 89; *Yale v. Oliver & Drake*, 21 La. A. 454.

*Same—Burden of proof.*

Where defendant having shown a sufficient legal excuse (the cotton having been taken by the federal forces) for not delivering the property, the burden of proof falls on plaintiffs, before they can recover, to show that the cotton was lost to them through the fault or neglect of defendant. *Babcock & Kernochon v. Murphy*, 20 La. A. 399.

*When not overpowering force, default not necessary.*

Where an agent or mandatory, or person having property on deposit at a time when he is not menaced by any overpowering force, allows the property to be taken from his possession without the consent or authority of the owner, he becomes responsible therefor, and the putting of him in default by demand and refusal is unnecessary. *James v. Greenwood*, 20 La. A. 297.

**O.***Same—Measure of damages—When cotton held to await better prices.*

Where cotton was stored and held, by a warehouseman, by direction of the owner in order to obtain better prices than those prevailing, and the same was converted and sold, the measure of damages is not the price obtained for the cotton but the best price prevailing within a few months after the sale. *Pierson v. Canal Bank*, 106 La. 305; *Pierson v. Metropolitan Bank*, 106 La. 298.

**P.***Insurance—Custom.*

Where the practice or custom of a factor is to insure consignments of produce, and this is brought to the knowledge of his consignor by uniform charges for insurance in his accounts rendered, the factor will be deemed to have continued that custom until he gives notice to the consignor of the change, and he is responsible for any loss, consequent upon his failure to insure, before such notice reaches the consignor. *Area & Lyons v. Milliken*, 35 La. A. 1150.

## Q.

*Warehouse receipt—Issue to factor and in his name and used as collateral—Owner protected.*

The owner who ships under a bill of lading and hands the bill to his factor may be said to have more or less connection with that instrument when it is subsequently advanced by a third party as the basis of rights predicated by him upon possession of the bill by the factor, particularly if the delivery of the property is directed to be made to the factor or his order. If after the cotton has been received and the bill of lading therefor has fully carried out its purpose of delivery, the factor stores the cotton, takes a receipt for the same in his own name from the warehouse and makes use of the receipts as a basis for credit, the warehouse receipt evidences a contract with which the owner is disconnected; it is an original transaction between the factor in his own name and the proprietors of the warehouse to which the owner is not "a party" though he has an interest in the subject-matter. It is clear that any contract by which one person attempts to divest another of his property, without the owner's consent, express or implied, or through due process of law, is without force. *Holton & Winn v. Hubbard et al.*, 49 La. A. 715.

*Same—Same—Interest of factor protected.*

To the extent that a factor is a creditor of his principal and holds a warehouse receipt for his claim, the principal is without interest to question the form of the receipt; a factor, being, under operation of law, subrogated to the rights of his principal to the extent of which he is his principal's creditor. *Chambers, Holton & Winn v. Hubbard & Co. et al.*, 51 La. 887.

*Same—Negotiability—Pledge by factor.*

A warehouseman had issued receipts for cotton stored with him to one who represented himself as the owner thereof, but who was in reality only the factor of the owner and had no interest in the property stored. Such depositor subsequently pledged the receipts to secure the payment of a loan made to him. In an action brought by the owner against the lender,

it was *held* that the latter, by the negotiation of the receipts to him, took only such title as the factor had, and a judgment awarding the property to the owner was affirmed. The possession and transfer of the receipt held to be equivalent only to possession and transfer of the property itself. *Insurance Co. v. Kiger*, 103 U. S. 352.

*Same—Rights of pledgee and of administrator of depositor.*

A warehouseman issued a warehouse receipt for two hundred and twenty-five bales of cotton then actually in his warehouse but without specification on the receipt of the particular bales of cotton received, deliverable on surrender of the receipt, indorsed by the original holder. The depositor pledged this receipt to one of his creditors by indorsement of the receipt, and the pledgee gave immediate notice of the pledge to the warehouseman. The depositor subsequently deposited other cotton in the same warehouse, receiving receipts for the same, also without designating the particular cotton covered by it. He then died. At the time of his death only seventy bales remained in the hands of the warehouseman, the balance having been delivered under orders of court to parties who had successfully claimed ownership thereof. In a contest for the remaining cotton between the pledgee of the warehouse receipt and the administrator of the succession of the depositor, *held* that the former was entitled to recover the cotton (citing *Cutters v. Baker*, 2 La. A. 572; *Williams v. Piner*, 10 La. A. 277; *Cormmach v. Floyd*, 10 La. A. 351; *Connery v. Webb*, 12 La. A. 272; *Newton v. Gray*, 10 La. A. 67). *State Nat. Bank v. Bryant & Mathers*, 49 La. A. 467.

*Same—Pledge of—Statute must be strictly complied with—Receipt must represent specific goods.*

Act No. 72 of 1876 requires that warehouse receipts shall be paragraphed "for hypothecation" and section 4 of the act requires the making of an affidavit. In a case where there was a failure to comply with the requirements of these two sections, it was *held* that there was not a valid pledge of the property represented by the receipts. A warehouse receipt in the form pre-

scribed by the above act must stand for the goods themselves, in such a way that its delivery will operate as a delivery of the goods; but in order that this should be, the receipt must represent the specific goods, or, at any rate, must represent a specific part of a common, or uniform mass; and a lot of cotton bales cannot be treated as a common or uniform mass, especially when, in addition to the physical disparity of the component bales there is a moral and legal disparity. The nature of the pledge of warehouse receipts is regulated in this state by the above mentioned act and non-conformity with the statute is fatal to any attempted pledge. *Pierson v. Metropolitan Bank*, 106 La. 298; *Pierson v. Canal Bank*, 106 La. 305.

*Same—Deposited by a factor and used as collateral by him—Judgment—Warehouseman protected.*

A warehouseman who had received cotton on deposit from a factor issued his warehouse receipt for the same, deliverable to the depositor or his order, only on surrender of the certificate. The factor who had deposited the cotton in his own name in the warehouse pledged the warehouse receipt to one of his own creditors. Certain parties claimed a portion of the property in the hands of the warehouseman, alleging that the factor was without authority to pledge the cotton. The warehouseman called upon the factor who had deposited the cotton and on the holders of the warehouse receipts, that they might oppose the restitution, but judgment was rendered ordering the warehouseman to surrender the cotton to the claimants. *Held* that the delivery of the cotton by the warehouseman to the claimants, under the judgment, protected him against any liability upon the receipts. C. C. 2934. *Bank v. Bryant & Mathers*, 49 La. A. 467.

*Same—Attached to draft—Surrender on acceptance.*

In the absence of instructions a collecting agent is authorized to infer that warehouse receipts were annexed to a draft to secure its acceptee, and were to be surrendered upon acceptance. *Moore & Sinnott v. La. Nat. Bank*, 44 La. A. 99.

## R.

*Bills of lading—Functions of.*

The function of a bill of lading is different from that of ordinary commercial paper. It is not a representative of money, used for the transmission of money, or the payment of debts. It is merely a contract for the performance of a certain duty—a representative of goods or personal property to be delivered. *Lallande v. His Creditors*, 42 La. A. 705.

*Same—Stipulations against loss by fire—Cannot excuse negligence.*

A stipulation in a bill of lading, for the transportation of cotton, that the carrier shall not be liable for damage occasioned by fire, will not exonerate it from responsibility for loss or damage from this cause if the fire be occasioned through the fault or ordinary negligence of the agents, servants or employees of the carrier. *Maxwell & Putnam v. Southern Pac. R. R.*, 48 La. A. 385.

*Same—Not negotiable paper.*

Notwithstanding, by statute, bills of lading may be made negotiable in form, they do not become possessed of all the incidents of negotiability that are attributes of bills and notes. *Lallande v. His Creditors*, 42 La. A. 705.

## CHAPTER XIX.

**MAINE.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**How far shipper, factor or agent shall be considered the owner of goods under his control :**

Every person, in whose name merchandise is forwarded, every factor or agent intrusted with the possession of any bill of lading, custom house permit, or warehouse keeper's receipt for the delivery of such merchandise, and every such factor or agent not having the documentary evidence of title, who is intrusted with the possession of merchandise for the purpose of sale, or as security for advances to be made thereon, shall be deemed the true owner thereof, so far as to give validity to any lien or contract made by such shipper or agent with any other person for the sale or disposal of the whole, or any part of such merchandise, money advanced, or negotiable instrument, or other obligation in writing, given by such person upon the faith thereof. Rev. Stat. Me. 1883, ch. 31, sec. 1.

**Not to extend to prior demands against agent :**

No person, taking such merchandise in deposit from such agent as security for antecedent demand, shall thereby acquire or enforce any right or interest therein other than such agent could then enforce. *Id.* ch. 31, sec. 2.

**Rights of the true owner in such cases :**

But the true owner of such merchandise, upon repayment of the money so advanced, restoration of the security so given, or satisfaction of all legal liens, may demand and receive his property, or recover the balance remaining as the produce of the legal sale thereof, after deducting all proper claims and expenses thereon. *Id.* ch. 31, sec. 3.

**Title to goods in possession of warehousemen passes to purchaser, or pledgee, by indorsement of warehouseman's receipt :**

The title to merchandise stored in a public warehouse, or on the wharves and premises of the warehouseman, and in his possession, passes to a purchaser or pledgee, in good faith, by the indorsement to such purchaser, or pledgee, but not in blank, of the warehouseman's receipt therefor, signed by the person to whom the receipt was originally given, or by an indorsee of the receipt, and recorded in the books of the warehouseman with whom such merchandise is stored. *Id.* ch. 31, sec. 4.

**Account of warehouse transactions to be kept :**

Each warehouseman shall keep books in which shall be entered an account of all transactions relating to the warehousing, storing and insuring of merchandise, the issuing of warehouseman's certificates, and the indorsement thereof, which books shall be open to the inspection of any person interested in the property stored in his warehouse. *Id.* ch. 31, sec. 5.

**Goods attachable as goods of person received to :**

Merchandise stored with a public warehouseman may be attached as the property of the person named in the warehouseman's receipt therefor, when no indorsement of such receipt has been recorded on the books of the warehouseman; and where such indorsement has been recorded, may be attached as the property of the last indorsee of the receipt, shown by the books of the warehouseman, by leaving at the warehouse where the merchandise is stored a copy of the writ, with a copy of so much of the officer's return thereon as relates to the attachment of such merchandise. And an attachment so made is valid against any transfer thereof, the evidence of which is not recorded in the books of the warehouseman, when the copy of the writ is so left. *Id.* ch. 31, sec. 6.

**Penalty for disposing of warehouseman's certificate without disclosing attachment :**

Whoever indorses or assigns, or otherwise disposes of a warehouseman's certificate, after his interest in the property described in such certificate has been attached, without disclosing

the attachment, thereof to the person to whom such certificate has been indorsed, assigned, or disposed of, shall, if he has knowledge of such attachment, be punished by fine not exceeding five thousand dollars and imprisoned in the state prison not exceeding three years, or by imprisonment in jail not exceeding one year. *Id.* ch. 31, sec. 7.

### **Who is a public warehouseman :**

Whoever advertises or offers to receive merchandise, on storage for other parties, is a public warehouseman for the purposes of this chapter. *Id.* ch. 31, sec. 8.

### **Grain, etc., stored in public warehouse becoming mixed—Proceedings :**

When grain or other property is so stored in a public warehouse that different lots or parcels are mixed together, so that the identity of the same cannot be accurately preserved, the warehouseman's receipt for any portion thereof shall be deemed a valid title to so much thereof as is designated in said receipt, without regard to any separation or identification. *Id.* ch. 31, sec. 9.

The following section is hereby added to chapter thirty-one of the Revised Statutes :

### **Goods, etc., remaining in warehouse one year, may be sold at public auction—Demand shall first be made for payment of charges upon person depositing goods—Notice shall be given of sale—How proceedings of sale shall be disposed of :**

Whenever goods, merchandise or any articles of personal property shall remain in a public warehouse for one year after the expiration of the time for which the charges thereon shall have been paid, the same may be sold at public auction, subject to the following conditions: the warehouseman shall first demand payment of the charges thereon by registered letter directed to the person who shall have deposited such goods, merchandise or articles of personal property in said warehouse, if such person shall have left with the warehouseman his address to which the

letter may be directed. After such demand, or in cases where no address shall have been given to the warehouseman to which such letter may be directed, the warehouseman shall give thirty days' notice of the time and place of sale in a public newspaper published in the city or town where the warehouse shall be, or if no public newspaper shall be published in such city or town, then in any public newspaper published in the county in which such city or town shall be; said notice shall contain a brief description of the property to be sold, with such marks thereon as may serve to identify it, if it shall be so marked, together with the name of the person depositing such articles in said warehouse and the name of the owner thereof if known; and shall specify the time after the expiration of said thirty days and the place, which shall be in the city or town where the warehouse shall be, at which the sale shall be made.

The proceeds of such goods, merchandise or articles of personal property so sold, after deducting the charges thereon, including the cost of publishing such notice and sale, shall be placed to the credit of the owner of the goods, merchandise or other articles of personal property sold, if known, otherwise to the credit of the person depositing said goods, merchandise or articles of personal property in the books of the warehouseman making the sale, and shall be paid to the owner thereof on demand, and the warehouseman shall not be liable for any greater sum than shall be received from said sale, less the charges thereon. Laws, Me. 1897, ch. 304, p. 339.

**Larceny by night in a dwelling house, or at any time breaking and entering certain other buildings, vessel, or railroad car—Punishment:**

Whoever, without breaking, commits larceny in the night-time, in a dwelling house, or building adjoining and occupied therewith, or breaks and enters any office, bank, shop, store, warehouse, barn, stable, vessel, railroad car of any kind, courthouse, jail, meetinghouse, college, academy, or other building for public use or in which valuable things are kept, and commits larceny therein, shall be punished by imprisonment for not less than one nor more than fifteen years; and when the offense is committed in the day-time, by imprisonment for not more than

six years, or by a fine not exceeding one thousand dollars. Rev. Stat. Me., 1883 ch. 120, sec. 2.

**Business, travelling and recreation prohibited on the Lord's day :**

Whoever, on the Lord's day, keeps open his shop, workhouse, warehouse, or place of business, travels, or does any work, labor, or business on that day, except work of necessity or charity; uses any sport, game or recreation; or is present at any dancing, public diversion, show, or entertainment, encouraging the same, shall be punished by fine not exceeding ten dollars. *Id.* ch. 124, sec. 20.

**Penalty for uttering forged receipts of delivery or deposit of goods, bonds, or securities :**

Whoever fraudulently makes or utters a receipt or other written evidence of the delivery or deposit or any grain, flour, pork, wood, or other goods, wares, or merchandise in any warehouse, mill, store, or other building, when the quantity specified therein had not, in fact, been delivered or deposited in such building; or so makes or utters any receipt or other written evidence of the delivery or deposit with him of any bonds or other securities or evidences of debt, when the same have not, in fact, been so delivered and deposited, shall be punished by imprisonment for not less than one year nor more than ten. *Id.* ch. 126, sec. 2.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Bailee may sue in his own name.*

A bailee of personal property, which is injured while in his possession, may sue in his own name and recover the amount of the injury in an action against the wrongdoer. *Little v. Fossett*, 34 Me. 545.

*Same—Replevin.*

The general owner of property in the hands of a bailee may maintain replevin against an officer, who, having attached the same as the property of the bailee, puts it in the hands of a receiver, by whom it is suffered to go back into the hands of the bailee—the attachment being not thereby dissolved. *Small v. Hutchins, Jr.*, 19 Me. 255.

*Same—Bailee can give no lien.*

A bailee can give no lien upon the property bailed, as against the owner. *Small v. Robinson*, 69 Me. 425.

*Same—Stipulation against loss by fire—Posted notices.*

A bailee may properly stipulate that he will not be responsible for goods lost by fire and this stipulation may be shown by proving a notice to this effect brought to the attention of the bailor. *Reinstein v. Watts*, 84 Me. 139.

*Same—Assignment by bailor—Notice.*

It is not a contradiction of the rule that a bailee shall not dispute his bailor's title to allow him to show that since the bailment the title has been assigned to another. *Roberts v. Noyes*, 76 Me. 590.

## R.

*Bill of lading—Definition.*

A bill of lading in the usual form is a receipt for the quantity of the goods shipped, and also a promise to transport and deliver the same. *O'Brien v. Gilchrist*, 34 Me. 554.

*Same—Parol proof.*

In so far as a bill of lading is a receipt, it may in a suit between the parties to it be controlled by parol evidence. *Id.*

*Same—Stipulations against negligence.*

Common carriers cannot stipulate for exemption from responsibility for losses occasioned by the negligence of themselves or their servants. *Sanger v. Portsmouth, S. P. & E. R. R. Co.*, 31 Me. 228; *Willis et al. v. Grand Trunk R. R. Co.*, 62 Me. 488; *Railroad Co. v. Lockwood*, 17 Wallace, 357.

*Same—“Good order” construed—Burden of proof.*

The signing of a bill of lading, acknowledging to have received the goods in question in good order and well conditioned, is *prima facie* evidence that, as to all circumstances which were open to inspection and visible, the goods were in good order, but it does not preclude the carrier from showing, in case of loss or damage, that the loss was produced from some cause, which existed, but was not apparent, when the goods were received, and which, if shown satisfactorily, will discharge the carrier from liability. But in case of such loss or damage, the presumption of law is that it was occasioned by the act or default of the carrier, and the burden of proof is upon the carrier to show that it arose from a cause existing before receipt of the goods for carriage. *Tarbox et al. v. Eastern Steamboat Co.*, 50 Me. 339.

*Same—Sale before arrival of goods—Stoppage in transitu.*

If a consignee assigned a bill of lading to third person for a valuable consideration, the right of the consignor to stop the goods *in transitu* as against such assignee is divested. This *held* to be the established rule of commercial law in England and in this country. The above is true when the assignment is made for a pre-existing debt. *Lee v. Kimball*, 45 Me. 172.

*Bills of lading—Negotiability.*

Bills of lading are transferable by indorsement, and when thus transferred by the consignee, to a *bona fide* purchaser, without notice of adverse claims, they pass the legal title, and operate as a sale and transfer of the property to the indorsee. *Winslow v. Norton*, 29 Me. 419; *Lee v. Kimball*, 45 Me. 172.

## CHAPTER XX.

**MARYLAND.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Bills of lading to be negotiable instruments :**

All bills of lading and all receipts, vouchers or acknowledgments whatsoever in writing, in the nature or stead of bills of lading for goods, chattels or commodities of any kind, to be transported on land or water, or on both, which shall be executed in this state, or being executed elsewhere, shall provide for the delivery of goods, chattels or commodities of any kind within this state, and all warehouse, elevator or storage receipts whatsoever for goods, chattels or commodities of any kind stored or deposited, or in said receipts stated or acknowledged to be stored or deposited for any purpose in any warehouse, elevator or other place of storage or deposit in this state, shall be and they are hereby constituted and declared to be negotiable instruments and securities, unless it be provided in express terms to the contrary on the face thereof, in the same sense as bills of exchange and promissory notes, and full and complete title to the property in said instruments mentioned or described, and all rights and remedies incident to such title, or arising under or derivable from the said instrument, shall ensue to and be vested in each and every *bona fide* holder thereof for value, altogether unaffected by any rights or equities whatsoever, of or between the original or any other prior holders of or parties to the same, of which such *bona fide* holder for value shall not have had actual notice at the time he became such.

Public General Laws, Md. art. 14, sec. 1.

**Conclusive evidence of their contents :**

Every instrument of those mentioned and described in section 1, which shall be issued by any person or corporation, or by any agent or officer of any person or corporation authorized

to issue the same on his or its behalf, or authorized or permitted by such person or corporation to issue like instruments on his or its behalf for goods, chattels or commodities, actually received for transportation or held on storage, as the case may be, shall be conclusive evidence in the hands of any *bona fide* holder for value of such instrument, who shall have become such without actual notice to the contrary, that all of the goods, chattels and commodities in said instrument mentioned or described, had been actually received by and were actually in the possession and custody of such person or corporation at the time of issuing the said instrument according to the tenor thereof, and for the purpose and to the effects therein stipulated or provided, notwithstanding that the fact may be otherwise, and that such agent or officer may have had no authority to issue any such instrument on behalf of his said principal, except for goods, chattels or commodities actually received and in possession at the time of such issue. *Id.* sec. 2.

#### **Storage receipts also to be negotiable :**

Every acceptance of an order and every other voucher whatsoever, for any goods, chattels or commodities as on storage or deposit, whereby the custody or possession of such goods, chattels or commodities shall be acknowledged or certified by any warehouseman, wharfinger or other person or corporation within this state, and which acceptance or voucher shall not on its face provide or stipulate in terms that it shall not be negotiable, shall be held and taken when issued to be a negotiable receipt and instrument to all intents and effects within the meaning and operation of this article. *Id.* sec. 3.

#### **When held to be completely issued :**

Any instrument declared negotiable by this article shall be held and taken to have been issued within the meaning of this article when it shall have been signed and shall have been delivered out of the custody of the person or corporation to be charged or bound by the same, or of his or its agent or officer aforesaid. *Id.* sec. 4.

#### **Not to be issued until goods are actually delivered :**

No person or corporation, or agent or officer of any person

or corporation in this state, shall issue any bills of lading, receipt, acknowledgment or voucher whatsoever, for goods, chattels or commodities of any kind to be transported on land or water, or on both, or any receipt, acceptance of an order or other voucher for goods, chattels or commodities, as on storage or deposit in this state, until and unless the whole of the said goods, chattels and commodities shall have been actually received to be transported by such person or corporation in the one case, or shall be actually in the possession or custody, or upon the premises, or under the absolute and exclusive control of such person or corporation in the other case at the time when such instrument shall be issued; and any principal person or corporation, or any agent or officer whatsoever, of any person or corporation, willfully violating this section, or any of the provisions thereof, shall be guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not less than one thousand nor more than five thousand dollars, in the discretion of the court. *Id.* sec. 5.

**Above section construed—What is a warehouse receipt within its meaning :**

The following *held* not to be a storage or warehouse receipt within the meaning of Act of 1876, ch. 262 (above): "Received on storage in my canning house, from E. B. M. & Co., seventeen hundred and twenty cases, 3x tomatoes, my own packing. Deliverable to the order of E. B. M. & Co., only on production of this receipt, properly indorsed." *State of Maryland v. Bryant*, 63 Md. 66.

**Duplicates—Delivery of goods—Penalties :**

No warehouseman or corporation or person whatsoever having issued or caused to be issued or having outstanding, and issued by any agent or officer of such person or corporation as aforesaid, any receipt, acceptance of order or other voucher for goods, chattels or commodities as on deposit or storage with or in the custody or on the premises, or under the control of such person or corporation, shall issue any other receipt, acceptance of order or other voucher whatsoever for the same, or any part thereof until the said first issued instrument shall

have been returned and cancelled or destroyed; and no person or corporation whatsoever having issued or having outstanding as aforesaid, any such receipt, acceptance of order or other voucher aforesaid, and no agent or officer of any such person or corporation shall part with, deliver or remove or permit to be delivered or removed, the goods, chattels or commodities in such instrument named or described, or any part thereof, except only to or by the holder of said instrument, or upon his order, and upon the presentation of said instrument with his indorsement in every case, or without cancelling or destroying said instrument in case of complete delivery or removal or indorsing thereon the quantity and description of the goods, chattels or commodities delivered or removed, and the names of the persons to whom delivered, or by whom removed in case such delivery or removal shall be partial only; and any principal, person or corporation or agent or officer of any person or corporation willfully violating this section or any of the provisions thereof, shall be guilty of a misdemeanor, punishable by a fine of not less than one thousand, nor more than five thousand dollars in the case of a corporation, and in the case of an individual by a fine of not less than one hundred, nor more than five thousand dollars, and imprisoned in the penitentiary for a period of not less than one year, nor more than three years, in the discretion of the court; *provided, however,* that nothing herein contained shall be construed to prohibit the *bona fide* issuing of duplicate receipts, acceptances or other vouchers aforesaid, with the word "duplicate" conspicuously written or printed upon the face thereof, in the stead of any original outstanding receipts, acceptances or other vouchers aforesaid, which may have been lost, destroyed or mislaid.

*Id.* sec. 6.

#### Civil remedies upon :

No person having any claim, right or action whatever under this article or otherwise upon or under any instrument declared negotiable thereby, or by reason of the issuing, negotiation or holding of said instrument, or the doing of any matter or thing by this article forbidden or made punishable, shall be in any way hindered or precluded from asserting or maintain-

ing the same by or because of any prohibitory or punitive provision in this article contained. *Id.* sec. 7.

**Fraud—Breach of trust—Bills of lading—Elevator or warehouse receipts :**

If any person or persons, shall on his or their own behalf, or shall for or on behalf of any other person or persons, or shall for [or] on behalf of any firm, co-partnership or corporation, receive, accept or take in trust, from any person, persons, firm, co-partnership or corporation, any warehouse receipt or elevator receipt, or bill of lading or any document giving or purporting to give title to or the right to possession of any goods, wares, merchandise or other personal property of any kind, under or subject to any written contract or agreement expressing the terms and conditions of such trust; and if such person or persons so receiving any warehouse receipt or elevator receipt, bill of lading or any document giving or purporting to give title to or the right to possession of any goods, wares or merchandise or other personal property of any kind shall, in violation of good faith, fail, neglect, or refuse to perform or fulfill the terms and conditions of such trust as expressed in such written contract or agreement, then and in every such case such person or persons so failing, neglecting or refusing to perform or fulfill the terms and conditions of such trust shall, on being convicted thereof, be imprisoned in the penitentiary for a term not more than ten years or less than one year, or be fined not more than five thousand dollars or less than five hundred dollars, or both in the discretion of the court. Supp. to Public General Laws of Md. 1890-1898, sec. 87a.

**Fraud—Warehouse—Storage and elevator receipts :**

If any person intrusted with any money, drafts or checks, as advances against any grain or other merchandise purchased and stored in any elevator in the city of Baltimore or elsewhere, and for which certificates or receipts have been turned into such elevator, or delivered to the parties with whom the same is stored, to be shipped or transported from the city of Baltimore to the purchaser of said grain or other merchandise, shall for his own benefit and in violation of good faith neglect or

refuse to deliver to the party so intrusting him with said money, draft or checks, the draft or bills of exchange, with the documents for the shipment of the said cargo of grain or other merchandise, and the policies of insurance upon said grain or other merchandise, as soon as the shipment is completed and the bills of lading delivered therefor, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be imprisoned in the penitentiary not more than ten years nor less than one year, or be fined not more than five thousand dollars or less than five hundred, or shall be both fined and imprisoned as aforesaid, in the discretion of the court. *Id.* sec. 119a.

**Appointment—Tenure of office and salaries of chief inspector and deputy inspectors of tobacco :**

The governor shall nominate and by and with the advice and consent of the senate, biennially appoint one chief inspector of tobacco, at a salary of two thousand dollars per annum, who shall have charge of all the state tobacco warehouses now used in the city of Baltimore, whose term of office shall begin on the first day of March following; the governor shall also biennially appoint three deputy inspectors, whose term shall begin and end at the same time as the chief inspector, and who shall receive a salary of eighteen hundred dollars per annum. Public General Laws, Md., art. 48, see. 9.

**Bond and duties of chief inspector :**

The chief inspector so appointed shall, before entering upon the discharge of the duties of his office, give bond to the state of Maryland in the sum of fifty thousand dollars, with a surety or sureties to be approved by the treasurer of the state, conditioned for the faithful performance of the duties imposed on him by law and for the full and punctual report at the end of each quarter of the receipts and disbursements of the state tobacco warehouses in the city of Baltimore under his charge, which bond shall be recorded in the office of the clerk of the superior court of Baltimore city, and the said chief inspector shall, so soon as he shall have bonded and qualified as required by law, take charge of all the tobacco warehouses in Baltimore city, except No. 2 warehouse, and all the tobacco, books, furni-

ture, appurtenances and effects belonging to the same, and shall receipt to his predecessors in office for the same, and upon the appointment and qualification of his successor, shall deliver the same to said successor and take a similar receipt; he shall personally or by deputy inspectors or their assistant deputies, in this subtitle provided for, inspect all tobacco in said warehouses; but said chief inspector, the deputies, assistant deputies or other persons appointed to or employed in said tobacco warehouses shall not be engaged in the purchase or sale of tobacco (except that they may sell tobacco of their own raising), nor shall it be lawful for any person thus appointed or employed in the warehouses to receive any gift or emolument whatever, either directly or indirectly, for any favor rendered in the line of his duty, other than his regular salary or wages, and any person violating the provisions of this section shall be immediately dismissed from office or service. Each of the deputy inspectors before entering on the duties of his office shall give bond to the chief inspector with a surety or sureties to be approved by said chief inspector in the sum of ten thousand dollars, conditioned for the faithful discharge of his duties; and the said chief inspector in his discretion may exact a bond from the persons who directly receive and handle the moneys collected on account of the business of said warehouses. The deputy inspectors shall be subject to removal for cause by the chief inspector, with the approval of the governor, and the said deputy inspector shall have authority to dismiss any assistant or employees in said warehouses whenever in his judgment shall seem for the good of the service for which they are respectively employed; and every deputy inspector shall be responsible to the chief inspector for the faithful performance of the duties of all employees under them, respectively, and any neglect of duty on the part of any employee shall be cause for his immediate removal by the deputy inspectors in their respective warehouses. *Id. sec. 10.*

**Appointment—Duties and salary of chief clerk of chief inspector—Appointment and salaries of clerks to deputy inspectors—Employment of laborers—Their wages :**

The chief inspector of tobacco shall be entitled to appoint

one chief clerk at a salary of twelve hundred dollars per annum, which chief clerk shall have his office at such one of the warehouses as shall be designated and occupied by the chief inspector, and shall perform all the duties of chief clerk to said chief inspector for all the business done at all of said warehouses. The said deputy inspectors provided for in this article shall respectively be in charge of such warehouse to which he is assigned by the governor, and shall each be authorized to appoint one tobacco note clerk, one receiving clerk, one shipping clerk, one weighing clerk, one assistant clerk, one sample tier, one janitor, one finder, one elevator and stay-floor man and not more than ten screwmen nor more than four laborers. The salaries of the tobacco note clerks shall be one thousand dollars per annum each, receiving clerks, shipping clerks and weighing clerks shall be eight hundred dollars per annum, each, that of the sample tiers shall be seven hundred dollars per annum each. The wages of the assistant clerks, janitors, finders, elevator or stay-floor men and serewmen shall be two dollars per day each, the wages of the laborers shall be one dollar and fifty cents per day each. No deputy inspector shall employ any additional force or labor than that hereinbefore specified, without the approval of the chief inspector, but with such approval the deputy inspectors are authorized to employ as many laborers at one dollar and fifty cents per day as may be necessary for the proper and economical management of the respective warehouses, and it shall be the duty of the chief inspector to order the discharge of any or all of said additional laborers in part or whole, whenever the regular force can do the work.

*Id.* sec. 11.

**Daily reports to be made by clerks—Office of chief inspector :**

At the end of each day the tobacco note clerk in each of said warehouses shall make a detailed report of the operation of such respective warehouses to the chief clerk, who shall enter a full record thereof in a book kept by him for that purpose; the chief clerk shall collect all moneys due said warehouses, and in a set of books to be provided for that purpose, keep the accounts of each warehouse separately, and consolidate the opera-

tions of all of said warehouses in one general ledger, so as to show the operations thereof individually and collectively. The chief inspector shall select an office in one of the warehouses now used by the state, to be most agreeable to him, with due regard to the most central location for the purpose of business. *Id.* sec. 12.

**How the salaries of chief inspector and other officers and employees shall be paid :**

The salaries and wages of the chief inspector, deputies, assistant clerks and all employees and appointees of said warehouses shall be paid from the receipts thereof and from no other source. *Id.* sec. 13.

**Chief inspector to have charge of receipts and expenditures, to make quarterly reports :**

The chief inspector shall have full charge of all the receipts and disbursements of the said warehouses, shall make all contracts for nails or other articles required for the use of said warehouses except for repairs, and shall make a report quarterly, viz: On the first of January, April, July and October in each year, showing the receipts and disbursements of each of said warehouses with the vouchers therefor, giving in detail the respective amounts received from outage, storage, cooperage, reconditioning, stays and sale of scraps, and also showing the respective amounts paid for labor, nails, lumber, hoops, incidentals, wages and salaries, and showing the cash balance for each quarter, and at the quarter ending April first in each year, pay over to the comptroller to whom the aforesaid reports are required to be made, all moneys in hand after paying all expenses and salaries of said warehouses, and said chief inspector shall have power to have tobacco delivered at such warehouses, as in his judgment may seem best for the public interest. *Id.* sec. 14.

**In case of absence from sickness—Inspector to appoint his substitute from among his clerks or employees—Oath of such substitute :**

In case of absence of the inspector by reason of sickness or any unavoidable cause, then during his absence his duties shall

devolve upon the chief clerk or other such clerk or employee as the inspector may select or designate, who shall qualify under oath for the faithful discharge of the same. *Id.* sec. 15.

**Duty of inspector in regard to numbering, etc., of hogsheads of tobacco :**

It shall be the duty of the inspector to cause each hogshead of tobacco landed or delivered at the warehouses to be numbered in succession, as received, and cause said number to be entered in a book kept for that purpose, together with the time said hogshead was received, the name of the vessel or other conveyance, if known to him, by which said hogshead was brought to the city of Baltimore and of the owner or consignee of said tobacco, and the initials or other trade-marks on said hogshead identifying the same, and when said hogshead shall be removed from said warehouses he shall cause an entry to be made in some book, kept for that purpose, of the time when the same was removed, the name of the person to whom the same was delivered and of the vessel or other conveyance by which the same was taken away. *Id.* sec. 18.

**Dispute concerning tobacco to be referred to arbitration committee—Proviso :**

Whenever any dispute shall arise concerning the correctness of any sample furnished by the inspector of tobacco under the seal of the state, said controversy shall be referred to a committee of arbitration, consisting of three persons, to be selected as follows: one thereof shall be selected by the inspector, one thereof shall be selected by the claimant or claimants, or his or their agents, and the two thus selected shall select the remaining member of said committee; provided, however, that no person shall be so selected, or if selected, shall be competent to serve as a member of any committee of arbitration, who shall have a direct or indirect interest in the tobacco in controversy. *Id.* sec. 23.

**Payment of the award :**

The inspector shall pay the amount of any award made in writing and under seal by any committee of arbitration duly

constituted as heretofore provided, to the party or parties thereto entitled, within thirty days after the date thereof, and shall take the receipt of the claimant or his agent for the same, which said receipt together with said award signed and sealed by said committee of arbitration or a majority of them, shall be returned by the inspector to the comptroller of the treasury in the inspector's next ensuing report thereafter and shall be a voucher for money expended. *Id.* sec. 25.

**Storage shall be rented when necessary :**

Whenever so large an amount of inspected tobacco shall have accumulated in the warehouses as to delay inspections, the inspector shall have the right to rent storage for as much as may be necessary to remove. *Id.* sec. 41.

**Inspector to have control of the wharves in absence of state wharfinger :**

In the absence of the state wharfinger, the inspector of tobacco shall have control of the wharves in front of the warehouses, so far as relates to the landing or cording of wood or other materials to the exclusion of tobacco, and vessels having tobacco or other conveyances having tobacco to deliver to such warehouses shall have preference over all others in the use of such wharves; no charge for wharfage shall be laid or any tobacco received at or delivered from any of the state warehouse wharves. *Id.* sec. 44.

**Duty of arbitration committee :**

If any owner or owners of tobacco, or his or their agent or agents shall believe that any of their tobacco has been incorrectly sampled, and shall so notify the inspector before the sale thereof within ten days of the date of its inspection, the matter shall be referred to a committee of arbitration, consisting of three persons to be selected as follows: One thereof shall be selected by the inspector, one thereof shall be selected by the owner or owners of the tobacco, or their agent or agents, and the two thus selected shall select the remaining member of the committee; and said committee shall have the power to require the deputy inspector in charge of said hogshead of tobacco to

have the same re-opened and if it shall be found that the sample does not correctly represent said tobacco, the said committee or a majority of them, shall select a sample which shall correctly represent, and shall be substituted in the place of the rejected sample at no cost of the owner; *provided, however,* that if said sample shall be found by said committee to properly represent said tobacco, then the cost of re-opening the said tobacco shall be paid by the owner of the same, and said cost shall be one dollar (\$1.00) per hogshead. *Id.* sec. 50a.

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NOTE. Corporations may be found for the purpose of conducting the warehouse business under the provisions of art. 23, sec 14 *et seq.* Maryland Public General Laws.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—When not countermandable.*

Where money or goods are delivered to a bailee to be delivered to a third person, the bailment is not countermandable *after* the third person has assented thereto, if there is a valuable consideration for the bailment. *Creager v. Link*, 7 Md. 259.

## B.

*Reasonable care—Defined.*

An instruction to the following effect, given by the court to the jury, defining the duty of a warehouseman in the bestowal of reasonable care, *held*, on appeal, to have been correct: "The said defendant was bound to use reasonable care in storing said goods in a place of safety according to their kind, and then by the practice of the same care keeping them from injury until called for by the plaintiff; that reasonable care in this connection means such care as a prudent man would give to the keeping of his own goods of like kind and under like circumstances." *Merchants' & Miners' Transportation Co. v. Story*, 50 Md. 4.

*Same—Deposit of bonds in a bank.*

In an action against a national bank for the recovery of the value of certain bonds which were stolen from its vault, such bonds being held by the bank as collateral security for the payment of any loans which it might, at subsequent times, make to the plaintiff, the court instructed the jury that the bank would be responsible if the jury found from the evidence that the bonds had been stolen in consequence of failure on the part of the defendant to exercise such care and diligence in the custody and keeping of them as, at the time, banks of common prudence, in like situation and business, usually bestowed in the custody and keeping of similar property belonging to themselves. That the care and diligence should be proportional to the consequences likely to arise from any improvidence on the part of the defendant, and that the jury might take into consideration whether it would have been a proper precaution to

have had an inside watchman in the bank at nights and on Sundays ; that the jury should also consider the value of the bonds and liability to loss, the temptation they offered to theft, the difficulty of recovering them if stolen, the situation of the building and vault, and the sufficiency of the safe in which the defendant kept them at the time they were stolen. Such instruction *held* correct. *Third National Bank v. Boyd*, 44 Md. 47.

*Conversion—Action at law.*

A conversion simply creates a pecuniary liability, and an action in equity will be dismissed for the want of jurisdiction unless there is some particular fund which the plaintiff seeks to recover on other ground for equitable relief. Even though a cause of action involves equitable features, if the legal remedy be complete, sufficient, and certain, it must be resorted to. *Cecil National Bank v. Thurber et al.*, 59 Fed. Rep. 913; *Buzard v. Houston*, 119 U. S. 347.

**N.**

*Goods damaged by water—Unusual rains—Reasonable care.*

A carrier, acting in the capacity of warehouseman, stored goods upon its wharf, and, owing to unusual rains, there was a sudden rise in the river, the goods being damaged by water. It further appeared that the tide had been steadily rising all day and it was not until the water came with a rush that the defendant attempted to remove plaintiff's goods. It was *held* that the defendant was liable in that it had not exercised reasonable care in its efforts to preserve the goods. *Merchants' & Miners' Transportation Co. v. Story*, 50 Md. 4.

**O.**

*Same—Measure of damages.*

In an action by the assignee of a warehouseman against an insurance company, on a policy covering twenty-eight (28) bales of cotton, where it appeared that some of the cotton stored in the warehouse had been rescued, the following instruction to the jury, in ascertaining the amount of damages, *held* to be correct: "If the jury find from the evidence that the plaintiffs

are entitled to recover, then, in ascertaining the amount of loss or damages which the plaintiffs are to recover, the jury ought to deduct such sum as from the evidence in the cause they may find is the proportion due to twenty-eight bales of cotton, in the distribution of the proceeds of sale of the rescued and saved cotton." *Hough, Clendening & Co. v. Prest. & Dir. Peoples' Fire Ins. Co.*, 36 Md. 398.

*Same—Bonds stolen from vault.*

Where bonds were stolen from vault of defendant, a national bank, the court instructed the jury that the proper measure of damages should be the value of the bonds at the time they were stolen and not the value at the time of demand. This instruction *held* correct. *Third National Bank v. Boyd*, 44 Md. 47.

**P.**

*, Insurable interest—Warehouseman has.*

The law is well settled that a person having goods in his possession as consignee, or on commission, may insure them in his own name, and in the event of loss, recover the full amount of the insurance, and, after satisfying his own claim, hold the balance as trustee for the owner. *Hough, Clendening & Co. v. Prest. & Dir. Peoples' Fire Ins. Co.*, 36 Md. 398; *Home Insurance Co. v. Baltimore Warehouse Co.*, 93 U. S. 527; *London & N. W. Ry. Co. v. Glyn*, 1 Ell. & Ell. Q. B. 652.

*Same—Double policies.*

Where several policies are in favor of the same assured, on the same interest, in the same subject, and against the same risk they are what is known as double policies, and the insurance companies issuing them are bound to contribute their respective proportion of the loss. *Hough, Clendening & Co. v. Prest. & Dir. Peoples' Fire Ins. Co.*, 36 Md. 398; *Balto. Fire Ins. Co. v. Loney*, 20 Md. 38.

**Q.**

*Warehouse receipts—Negotiability—Bona fide holder protected.*

A warehouseman issued receipts for goods stored with him to one who represented himself as the owner of the goods, it appearing from certain tickets in the nature of bills of lading

that such person was the consignee of the goods. The warehouseman afterward loaned money to him and accepted the warehouse receipts as collateral security. It subsequently appeared that the person who had deposited the goods was not in fact the owner thereof but that they had been consigned to him by the owner, in the course of business dealings. In an action against the warehouseman by the owner, it was *held* that the warehouseman was *bona fide* holder of the receipts and, therefore, judgment was rendered in his favor. Article 14, section 1 of the Code construed. *Farmers' Packing Co. v. Brown & Sons*, 87 Md. 1; *Tildeman v. Knox*, 53 Md. 612. (Note. The case of *B. & O. R. R. Co. v. Wilkins, etc.*, 44 Md. 11, *held* that bills of lading were not negotiable in the sense that promissory notes were, but this case was decided in the October term, 1875, whereas art. 14, sec. 1 of the Code was enacted in 1876.)

*Same—Same—“Actual notice,” what is equivalent to.*

Where a bill of lading contains statements which would put a reasonable man on notice that other persons than the assignor had an interest in the goods, such statements *held* to be equivalent to actual notice, and the assignee does not take the property clear of all equities. If, under such circumstances, the assignee failed to follow up, by inquiry, and thus learn all about the transaction, it was *held* to be his own fault and he had no right to complain. *Jacob Dold Packing Co. v. Ober & Sons Co.*, 71 Md. 155; *Richards, Leftwich & Co. v. Meyer & Kross*, 57 Md. 10.

*Same—Must be issued by warehouseman.*

It is clear from the language of the Act of 1876 (chapter 262), which provides that bills of lading, warehouse, elevator, or storage receipts shall be negotiable in the same sense as bills of exchange, that the legislature never meant to declare that a mere receipt issued by one engaged in the canning business, for the goods canned by him, which were to remain in his possession subject to the order of the purchaser, should pass title to the goods as against all other persons, and should also be negotiable in the same sense as bills of exchange and promissory notes. *State of Maryland v. Bryant*, 63 Md. 66.

## R.

*Bills of lading—Exemptions in.*

Common carriers may, by special contract, limit their liability, as recognized by the common law, where there seems to be reason and justice to sustain the limitation. *McCoy & Parkhurst v. Erie & Western Trans. Co.*, 42 Md. 498; *Bankard v. B. & O. R. R.*, 34 Md. 197; *Railroad Co. v. Lockwood*, 17 Wall. 357.

*Same—Evidence received to the effect that the goods were never received.*

It appeared that the agent of the defendant company had signed a bill of lading in which it was stated that certain goods had been received by the defendant. It was shown, on the trial, that the agent issued this bill of lading upon a promise that the railroad or cotton press receipts for the property would be subsequently delivered to him. The court held that it was proper to allow the agent to explain the circumstances under which he was induced to sign the bill and also to testify to the fact that the goods, represented to have been received, were not in fact delivered to him. *Lazard et al. v. Merchants' & Miners' Transportation Co.*, 78 Md. 1.

*Same—Parol agreement and parol proof.*

The legal operation of the contract contained in a bill of lading may be modified by adding thereto a parol supplementary agreement that the freight was to be at the risk of the shipper, and such special agreement may be established by parol proof. *Atwell & Appleton v. Miller*, 11 Md. 348.

## CHAPTER XXI.

**MASSACHUSETTS.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Public warehousemen may be licensed by the governor :**

The governor, with the advice and consent of the council, may license in any city or town suitable persons, or corporations established under the laws of the commonwealth and having their places of business within the commonwealth, to be public warehousemen, who may keep and maintain public warehouses for the storage of goods, wares, and merchandise. But no railroad corporation which may be licensed as a public warehouseman shall be required as such to receive any property except what has been or is forthwith to be transported over its road.  
P. S. ch. 72. sec. 1, 1882.

**Bond in amount and with such sureties as shall be approved by the governor :**

Every person and corporation licensed under the preceding section shall give bond to the treasurer of the commonwealth in such amount and with such sureties as shall be approved by the governor, for the faithful discharge of the duties of a public warehouseman; except that a railroad corporation so licensed shall not be required to give any sureties on its bond. 1885, ch. 167, sec. 2.

**How an action on bond may be brought :**

When a licensed public warehouseman fails to perform his duty or violates any of the provisions of this chapter, any person injured by such failure or violation may bring an action in the name of the commonwealth, but to his own use, in any court of competent jurisdiction, on the bond of such warehouseman. In such action the writ shall be indorsed by the person in whose behalf the action is brought, or by some other person satisfactory to the court; and the indorser shall be liable to the defendant

for any costs which the defendant may recover in such action, and the commonwealth shall not be liable for any costs. P. S. c. 72, see. 3.

**Warehouseman may be required to insure property deposited with him :**

Every such warehouseman shall, when requested thereto in writing by a party placing property with him on storage, cause such property to be insured for whom it may concern. When such warehouseman is a railroad corporation, it may itself insure such property, instead of causing it to be insured by any other insurer. *Id.* sec. 4.

**Negotiable warehouse receipts—What to state—Non-negotiable receipts given on request—Stamped—Assignments of non-negotiable receipts not valid till recorded :**

Every such warehouseman shall, except as hereinafter provided, give to each person depositing property with him for storage, a receipt therefor, which shall be negotiable in form, and shall describe the property, distinctly stating the brand or distinguishing marks upon it, and if such property is grain the quantity and inspected grade thereof. The receipt shall also state the rate of charges for warehousing the property and the amount and rate of insurance thereon: *Provided, however,* that every such warehouseman shall upon the request of any person depositing property with him for storage give to such person his non-negotiable receipt therefor, which receipt shall have the words "non-negotiable" plainly written, printed or stamped upon the face thereof; and *Provided, further,* that assignments of such non-negotiable receipts shall not be effectual until recorded on the books of the warehouseman issuing them. 1886, c. 258.

**Title of property stored to pass by indorsement and delivery of receipt :**

The title to goods and chattels stored in a public warehouse shall pass to purchaser or pledgee by the indorsement and delivery to him of the warehouseman's receipt therefor, signed by the person to whom such receipt was originally given or by an indorsee of such receipt. P. S. c. 72, see. 6.

**Special provision for grain, etc. :**

Where grain or other property is stored in a public warehouse in such a manner that different lots or parcels are mixed together so that the identity thereof cannot be accurately preserved, the warehouseman's receipt for any portion of such grain or property shall be deemed a valid title to so much thereof as is designated in said receipt, without regard to any separation or identification. *Id.* sec. 7.

**Warehouseman to keep books open to inspection, etc. :**

Every such warehouseman shall keep books in which shall be entered an account of all his transactions relating to the warehousing, storing, and insuring of goods, wares, and merchandise, and to the issuing of receipts therefor, which books shall be open to the inspection of any person actually interested in the property to which such entries relate. 1895, c. 348, sec. 1.

**Notice of names of persons licensed, and of amount of their bonds, to be published, etc. :**

Due notice of the license and qualifications of each warehouseman, of the amount of the bond given by him, and also of his discontinuance as a warehouseman, shall be given at his expense by the secretary of the commonwealth by publishing the same for not less than ten days in one or more newspapers published in the county or town in which the warehouse is located, or, if no newspaper is published in such county, then in one of the newspapers published in the city of Boston. P. S. c. 72, sec. 9.

**Penalty for the unlawful sale of property deposited in a public warehouse :**

Whoever unlawfully sells, pledges, lends, or in any other way disposes of, or permits, or is a party to the unlawful selling, pledging, lending, or other disposition of any goods, wares, merchandise, article, or thing deposited in a public warehouse, without the authority of the party who deposited the same, shall be punished by a fine not exceeding five thousand dollars and by imprisonment in the state prison for not more than three years. But no public warehouseman shall be liable to the penalties provided in this section unless with intent to injure

or defraud any person he so sells, pledges, lends, or in any other way disposes of, or permits or is a party to the selling, pledging, lending, or other disposition of any goods, wares, merchandise, article, or thing so deposited. 1895, ch. 348, sec. 2.

**For forging, etc., warehouse receipt, etc. :**

Whoever falsely makes, utters, forges, or counterfeits, or permits or is party to the false making, uttering, forging, or counterfeiting, of a warehouse receipt, certificate, or other instrument used to pass or to give title to property deposited in a public warehouse, shall be punished by fine not exceeding five thousand dollars and imprisonment in the state prison for not more than three years. P. S. ch. 72, sec. 11.

**For forging, etc., signature of warehouseman—Indorser, etc., on receipt :**

Whoever falsely makes, utters, forges, or counterfeits, or permits or is a party to the false making, uttering, forging, or counterfeiting, of the signature of a warehouseman or of an indorser or other person to an instrument used to pass or to give title to property deposited in a public warehouse, shall be punished by fine not exceeding five thousand dollars and by imprisonment in the state prison for not more than three years. *Id.* sec. 12.

**Warehouseman may appoint deputies :**

A warehouseman appointed under the provisions of this chapter may appoint one or more deputies, for whose acts he shall be responsible. *Id.* sec. 13.

**Penalty for disposing of warehouseman's receipt after property has been attached :**

Whoever, after his interest in the property described in a warehouseman's receipt has been attached, indorses, assigns, or otherwise disposes of such receipt, without disclosing such attachment to the person to whom such receipt is indorsed, assigned, or disposed of, shall, if he has knowledge of such attachment, be punished by fine not exceeding five thousand dollars and by imprisonment in the state prison for not more than three

years, or by imprisonment in the common jail for not more than one year. *Id.* sec. 14.

#### **Collection of charges for storage by public warehouseman :**

Every public warehouseman, who shall have in his possession any property by virtue of any agreement or warehouse receipt for the storage of the same, on which a claim for storage is at least one year overdue, may proceed to sell the same at public auction, and out of the proceeds may retain the charges for storage of said goods, wares and merchandise, and any advances that may have been made thereon by him or them, and the expense of advertising and sale thereof; but no sale shall be made until after the giving of a printed or written notice of such sale to the person or persons in whose name such goods, wares and merchandise were stored, requiring him, her or them, naming them, to pay the arrears or amount due for such storage, and in case of default in so doing that such goods, wares and merchandise will be sold to pay the same, at a time and place to be specified in such notice. 1887, ch. 277, sec. 1.

#### **Notice of sale of goods by public warehousemen for payment of storage charges—How served :**

The notice required by the last preceding section shall be served by delivering it to the person or persons in whose name said goods, wares and merchandise were stored, or by leaving it at his usual place of abode, if within the commonwealth, at least sixty days before the time of such sale, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person, with an affidavit of the truth of the return. If the party storing such goods cannot with reasonable diligence be found within the commonwealth of Massachusetts, then such notice shall be given by publication once in each week for three successive weeks, the last publication to be at least thirty days before the time of such sale, in a newspaper published in the city or town where such warehouse is located, or if there is no such paper, in one of the principal newspapers published in the county in which said city or town is located. In the event that the party storing such goods shall have parted with the same, and the purchaser shall have notified

the warehouseman, with his address, such notice shall be given to such person in lieu of the person storing the goods. 1895, ch. 348, sec. 6.

**Warehouseman to enter in a book surplus of proceeds of sale and pay the same into the treasury of the commonwealth—Affidavit—Evidence :**

Such warehouseman shall make an entry, in a book kept for that purpose, of the balance or surplus of the proceeds of the sale, if any, and such balance or surplus shall be paid over to such person or persons entitled thereto on demand; and if such balance or surplus is not called for or claimed by said party or owner of said property within six months after such sale, such balance of surplus shall be paid by such warehouseman to the treasurer of the commonwealth, who shall pay the same to the parties entitled thereto, if called for or claimed by the rightful owner within five years after the receipt thereof; and such warehouseman shall, at the same time, file with said treasurer an affidavit, in which shall be stated the name and place of residence, so far as the same are known, of the person whose property has been sold, the articles sold and the prices at which they were sold, the name and residence of the auctioneer making the sale, together with a copy of the notice served or published, and how served. Such notice and affidavit, when filed as above provided, shall be admitted as evidence of the giving of the notice. 1895, ch. 277, sec. 3.

**Perishable or dangerous property deposited in a public warehouse may be sold in certain cases :**

Whenever a public warehouseman has in his possession any property which is of a perishable nature, or which will deteriorate greatly in value by keeping, or upon which the charges for storage will be likely to exceed the value thereof, or which by its odor, leakage, inflammability, or explosive nature is likely to injure other goods, such property having been stored upon a non-negotiable receipt; and when said warehouseman has notified the person in whose name the property was received to remove said property and such person has refused or omitted to receive and take away such property and to pay the storage and proper charges thereon, said public warehouseman may, in the

exercise of a reasonable discretion, sell the same at public or private sale without advertizing, and the proceeds, if there are any proceeds, after deducting the amount of said storage charges and expenses of sale shall be paid or credited to the person in whose name the property was stored; and if said person cannot be found, on reasonable inquiry, the sale may be made without any notice; and the proceeds, of such sale after deducting the amount of storage, expenses of sale and other proper charges, shall be paid to the treasurer of the commonwealth, who shall pay the same to the person entitled thereto, if called for or claimed by the rightful owner within one year of the receipt thereof by said treasurer. 1895, ch. 348, sec. 3.

#### **Disposal of property which warehouseman cannot sell :**

Whenever a public warehouseman, under the provisions of the preceding section, has made a reasonable effort to sell perishable and worthless property and has been unable to do so because of its being of little or no value, he may then proceed to dispose of such property in any lawful manner, and he shall not be liable in any way for property so disposed of. *Id.* sec. 4.

#### **Liability of depositor of goods in public warehouse for charges regulated :**

Whenever a public warehouseman, under the provisions of the two preceding sections, has sold or otherwise disposed of property, and the proceeds of such sale or disposition have not equaled the amount necessary to pay the storage charges, expenses of sale and other charges against such property, then the person in whose name said property was stored shall be liable to said public warehouseman for an amount which, added to the proceeds of such sale, will be sufficient to pay all of the proper charges upon such property; or in case such property was valueless, and there were no proceeds realized from its disposition, the person in whose name said property was stored shall be liable to said public warehouseman for all proper charges against said property. *Id.* sec. 5.

#### **Notice of sale of goods for public warehouseman for payment of storage charges—How served :**

The notice required by the last preceding section shall be

served by delivering it to the person or persons in whose name said goods, wares and merchandise were stored, or by leaving it at his usual place of abode, if within the commonwealth, at least sixty days before the time of such sale, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person, with an affidavit of the truth of the return. If the party storing such goods cannot with reasonable diligence be found within the commonwealth of Massachusetts, then such notice shall be given by publication once in each week for three successive weeks the last publication to be at least thirty days before the time of such sale, in a newspaper published in the city or town where such warehouse is located, or if there is no such paper, in one of the principal newspapers published in the county in which said city or town is located. In the event that the party storing such goods shall have parted with the same, and the purchaser shall have notified the warehouseman, with his address, such notice shall be given to such person in lieu of the person storing the goods. *Id.* sec. 6.

**Determination of title, etc., to property held by public warehousemen, etc. :**

*Be it enacted, etc., as follows:* In any action in which recovery of, or the determination of the title to, property held by a public warehouseman or other depositary is sought, if it appears that such property is claimed by another party than the plaintiff, whether by the husband or wife of said plaintiff or otherwise, the court in which such action is pending, on the petition of the defendant, which petition shall give the name and residence of all known claimants, and on such notice as the court may order to the plaintiff and to such claimants, may order the proceedings to be amended by making such claimants defendants therein; and thereupon the rights and interests of the several parties in and to such property shall be heard and determined. Such property may remain in the hands of the public warehouseman or other depositary until final judgment, and shall then be delivered in accordance with the order of the court. Acts & Resolves, Mass. 1899, ch. 352, p. 310.

## DECISIONS AFFECTING WAREHOUSEMEN.

**B.***Ordinary care.*

A warehouseman is only obliged to bestow ordinary care in the custody of property intrusted to him. *Cox v. Boston & P. R. R. Co.*, 10 Met. 472; *Aldrich v. Boston & Worcester R. R. Co.*, 100 Mass. 31.

*Same—Failure to deliver—Need not show precise manner of the loss.*

A warehouseman who fails to deliver property bailed to him must account therefor; if lost he is bound to show that the loss occurred without a want of ordinary care or diligence on his part, but not necessarily the precise manner in which the loss occurred. *Lichtenhein v. Boston & P. R. R. Co.*, 11 Cush. 70; *President, Directors, etc., Conway Bank v. American Express Co.*, 8 Allen, 512.

*Same—Liability coextensive to possession—Rule stated.*

The obligation of warehousemen to exercise ordinary care for the protection and safety of goods committed to their custody depends upon and is coextensive with actual and continued possession. If they lose that possession through any omission of the duty thus attaching to them in that relation, they are liable for all the consequences that ensue from it. On the other hand, if without fault on their part the property is taken from their possession, or lost by means for which they are not responsible, they are not required to go in pursuit of it, or to incur any expense of time, labor or money in endeavoring to discover or regain it. *Sessions & Ano. v. Western R. R. Corporation*, 16 Gray, 132.

*Conversion—Delivery to officer—Attachment does not constitute.*

The defendant, a warehouseman, opened the door of a compartment in his warehouse in which the property of the plaintiff was stored and allowed an officer to attach the same. This

was held in nowise to constitute a voluntary surrender of the property by the warehouseman, and further that the warehouseman, in allowing this attachment to be made, was not guilty of conversion. *Clegg v. Boston Storage Warehouse Co.*, 149 Mass. 454.

*Conversion—Warehouseman with power to receive offers not authorized to sell—Lien—Innocent purchaser.*

The plaintiff at the request of one J., who was a commission merchant and warehouseman, made certain advances to J. upon wool consigned to him. The plaintiff received from J. the receipt from the railroad for the wool and never surrendered possession thereof. The wool was stored in J.'s warehouse and he was given authority by the plaintiff to negotiate sales thereof, to be reported to plaintiff for approval before being concluded. J. was a part owner of the wool but this fact was unknown to plaintiff. Without the knowledge of plaintiff, J. fraudulently pledged the wool to defendant for advances; the defendant had the wool removed to another warehouse, but he did not demand of J. a bill of lading or other proof of title and he knew J. was engaged in business as a warehouseman. Upon the above state of facts it was held that the plaintiff's rights as consignee in the wool were not lost by placing the same in the warehouse of J. to be stored until it could be sold. Further that it was not the doctrine in Massachusetts that even if the plaintiff had known that J. was a part owner of the wool that the deposit of it in good faith with him as a warehouseman, with authority to negotiate sales as a broker, to be concluded by plaintiff, would have enabled J. to have vested a good title in an innocent purchaser by a sale made by him on his own account. Further, that J. was not a "factor or other agent intrusted with the possession of merchandise for the purpose of sale," within the meaning of c. 54, sec. 2 Gen. Stats., nor was J. "a person intrusted with merchandise, and having authority to sell or consign the same" within the meaning of c. 54, sec. 3, Gen. Stats. Finally that the plaintiff held a valid lien against the property; that defendant having sold the same this amounted to a conversion thereof, for which the defendant was liable to the plaintiff. *Thatcher v. Moors*, 134 Mass. 156.

## G.

*Bonded warehouses—Private warehouse—“Warehoused” construed.*

The plaintiff, an importer, brought an action against the defendant, as collector of the port of Boston, for money paid to the defendant to which the latter was not entitled, under the warehouse law. It appeared that when a quantity of molasses, consigned to the plaintiff arrived at the port of Boston, the public warehouses at that port were filled. The plaintiff thereupon procured, at his own expense, accommodations in private warehouses, and the defendant assented to the deposit of the molasses at the places secured by the plaintiff, on condition that the latter would pay to the defendant, as collector for said port, one half the usual rates of storage charges on similar goods. It does not affirmatively appear that while the goods were stored government officials were in charge thereof, but in the absence of such testimony the court assumed that this was the case. On the withdrawal, the sum of \$145.19 was demanded of the plaintiff by the defendant, which was accordingly paid to him. The court *held* that from the agreed statement of facts, which was substantially as above, the action could not be maintained. *Atkins v. Peaslee*, 1 Clif. 446.

*Same—Withdrawal through fraud—Misdelivery of spirits—Forfeiture.*

It appeared that spirits had been fraudulently withdrawn from a government warehouse, without the payment of the internal revenue tax, and had been mixed with other spirits. In an action by the government against the spirits, it was contended, in the behalf of one of the claimants, that as the collector had surrendered the spirits upon the production of a permit, the delivery had been made with proper authority. But, as it appeared that such permit had been obtained by fraud, it was *held*, as respects the perpetrator of the fraud, the permit was a mere nullity. It was further *held* that as the spirits seized came from the rectifiers, mixed with the spirits fraudulently withdrawn from the bonded warehouse and other lots belonging to the claimants, so that they could not be distinguished, the United States were entitled to a for-

feiture of a fair proportion of the mixture, even though the mixture might have been innocently made. *United States v. Two Hundred and Seventy-eight Barrels of Distilled Spirits*, 3 Clif. 261.

#### H.

*Lien for storage charges—Partial delivery—Lien on remainder for full storage charges.*

The plaintiff, the owner of goods, shipped the same by a common carrier to one who intended to purchase them, but owing to a defect in the quality, the latter refused to accept the goods. The carrier thereupon stored the goods and about ten days thereafter, notified the consignee that it had done so. Subsequently an arrangement was made between the owner and the consignee for the sale of the goods to the latter. The carrier delivered a portion of the goods but refused to surrender the balance unless the warehouseman's storage charges were paid. It was *held* that this contention was correct and that the warehouseman had a lien on the goods retained for the full amount of charges against all of the goods. *Barker v. Brown*, 138 Mass. 340; *Lane v. Old Colony & Fall River R. R.*, 14 Gray, 143; *New Haven & Northampton Co. v. Campbell*, 128 Mass. 104.

#### M.

*Effect of pledge—Possession by pledgor—Lien not always destroyed.*

The mere fact that the pledgor has possession, so that in him the possession and the general ownership are united, does not as a matter of law destroy the lien of the pledgee, without regard to the circumstances under which, or the purposes for which, the possession was obtained. *Thacher v. Moors*, 134 Mass. 156; *Macomber v. Parker*, 14 Pick. 497; *Walcott v. Keith*, 2 Foster, 196.

#### N.

*Loss by fire—At night—Employees present under no obligation to rescue goods.*

In an action against a warehouseman for the loss of goods which had been destroyed by a fire, which consumed the ware-

house and its contents, the evidence showed that the employees of the defendant were present during the fire and might, with safety to themselves, have rescued property belonging to the plaintiff, it was *held* that the warehouseman was not liable; that it was no part of the duty of the employees of the defendant to attend to the removal of goods from the warehouse in the case of fire at night. They were under no obligation to be present during the fire and their voluntary attendance imposed upon them no legal liability for the mere omission to do anything when on the spot. Whatever they did was done by them as volunteers, as neighbors, and as citizens—not as employees of the defendant. *Aldrich v. Boston & Worcester R. R. Co.*, 100 Mass. 31.

*Same—Carrier liable as warehouseman—When Public Statutes, chapter 112, section 214, not applicable.*

The defendant, a common carrier, was sued in tort by the plaintiff for the loss of his goods, which were destroyed, while in a freight house belonging to the defendant, by fire communicated from a locomotive of defendant. It appeared that the goods had been carried by the defendant for the plaintiff and that the transit had terminated. The court *held* that the action could not be maintained under Public Statutes, chap. 112, sec. 214. The goods of the plaintiff having been destroyed while in the possession of the defendant pursuant to a contract made between them, the plaintiff must seek his remedy under such contract. *Bassett v. Connecticut River R. R. Co.*, 145 Mass. 129.

*Same—Same—Same—Property still held under contract for carriage.*

Where, in a case similar to the above, it appeared that the contract for carriage had not been completed and that the goods were still in the possession of the defendant, as carrier, either in its cars or in its warehouse for a reasonable time in which the plaintiff could remove the same, the carrier was *held* liable for the loss of the goods. *Blaisdell v. Connecticut River R. R. Co.*, 145 Mass. 132.

*Misdelivery—Change of ownership in warehouse—Goods in wrong name.*

A suit was instituted against a warehouseman who had purchased a warehouse from one previously engaged in the business and who took an assignment thereof, together with a list of all the property in the warehouse and the names of the several owners thereof. It appeared from the evidence that there was a mistake made in such list and goods which, in reality, belonged to A. were therein stated to belong to H. The warehouseman notified H. to remove the goods, which he did. The evidence showed that the warehouseman acted entirely in good faith in the matter. The court *held*, in the action by the owner for the recovery of these goods, that the delivery by the defendant to H. did not constitute a conversion and that the warehouseman was not liable to the owner therefor. *Parker v. Lombard and another*, 100 Mass. 405.

*Pleading—Burden of proof—Instruction to jury.*

In an action against a carrier, charging it with liability as a warehouseman, the defendants alleged that the goods had been fraudulently abstracted from their custody. The judge ruled that to maintain the action, it was only necessary for the plaintiff, in the first instance, to show the receipt of the goods by the defendants and their failure to deliver them upon demand; that this imposed upon the defendants the duty of accounting for them, but that the defendants were not bound to show affirmatively in what precise manner the loss occurred, but only, if they were unable to prove how it occurred, to show clearly that they had exercised ordinary care respecting the goods, and that the loss did not happen from any negligence or want of ordinary care on their part. The judge further ruled, that if the property were taken by mistake from the depot, and the defendants exercised ordinary care in the matter, the defendants would not be answerable for a loss under such circumstances, but that if the agent of the defendants delivered it by mistake to a wrong person, the defendants would be responsible. On appeal the above ruling *held* correct. *Lichtenhein v. Boston & Providence R. R. Co.*, 11 Cush. 70.

*Same—Burden of proof on plaintiff.*

The plaintiff alleged that the defendant had been guilty of negligence in the care and custody of plaintiff's goods. The plaintiff simply proved non-delivery on demand and the court instructed the jury to find for defendant, stating that plaintiff must show the alleged negligence. This instruction *held* correct on appeal. *Lamb v. Western R. R. Cor.*, 7 Allen, 98; *Roberts v. Gurney*, 120 Mass. 33; *Willett et al. v. Rich et al.*, 142 Mass. 356; *Murray v. International Steamship Co.*, 170 Mass. 166; *Gay et al. v. Bates*, 99 Mass. 263.

*Same—When burden of proof on warehouseman—Where declaration alleges demand and refusal but not negligence.*

The plaintiff sued the defendant, a railroad corporation, alleging that it was liable as a warehouseman, that the property had been received by it and, upon demand, redelivery had been refused. In the answer the defendant admitted that it received the property, and alleged that without any neglect, default, or carelessness whatever on its part, the same was stolen from its warehouse. Upon these pleadings it was *held*, on appeal, that this form of declaration imposed the duty and burden upon the defendant who had put in special matter in defense of the action. The case was clearly distinguished from *Lamb v. Western Railroad Corporation*, 7 Allen, 98, in that the allegation of the declarations were materially different. In the present case, the court *held* that the breach of contract was not denied by the defendant, the issue being on the new matter alleged by it, and therefore, the burden was upon the party alleging such new matter—the defendant. *Cass v. Boston & Lowell R. R. Co.*, 14 Allen, 448.

*Same—Warehouseman need not show precise manner of loss.*

Where an action was instituted, charging the defendant with liability as a warehouseman, for the non-delivery of goods intrusted to him, the court *held* that the defendant was not bound to show the precise manner in which the loss occurred, but, if unable to do this, he might exonerate himself from that burden by clearly showing that the loss did not happen from

any negligence or want of care on his part. *Lichtenhein v. Boston & Providence R. R. Co.*, 11 Cush. 70.

*Same—Evidence—Letter offering to compromise, inadmissible.*

A letter, written by an employee of the defendant, a warehouseman, before the institution of the suit, to the plaintiff, offering to allow the goods to be removed free of storage charges, for the purpose of settling, in this way, a claim for damages to the goods stored, which damages were alleged to have resulted from the condition of the warehouse, *held*, not admissible in evidence. *Gay et al. v. Bates*, 99 Mass. 263.

## O.

*Damages for loss of property—Right of consignee to recover.*

A consignee of merchandise is entitled to recover full damages, and is responsible over to his consignor for any balance remaining after satisfying his claims upon the property. *Thacher v. Moors*, 134 Mass. 156 ; *Ullman v. Barnard*, 7 Gray, 554.

*Same—Measure of damages—Ordinary rule.*

The ordinary rule of damages is the market value of the property at the time of the conversion, with interest from that time. *Thacher v. Moors*, 134 Mass. 156.

## P.

*Loss by fire—Burden of proof on plaintiff to show negligence.*

An instruction to the jury that the burden of proof was on the plaintiff to satisfy them that the fire was due to defendant's negligence was correct. *Cox v. Central Vermont R. R.*, 170 Mass. 129.

*Same—Testimony showing intoxication of watchman, receivable.*

It was *held* competent in an action against a warehouseman, for the loss of goods destroyed by fire, to show that the night watchman employed by the defendant was one in the habit of becoming intoxicated; that the watchman had indulged in this habit at a period several years before the occurrence, and that such habit had continued to the time of the fire. This evidence was receivable on the ground that the defendant, in the exercise of reasonable care, ought to have known of the

habits of his watchman. *Cox v. Central Vermont R. R.*, 170 Mass. 129.

*Same—Safety of place of storage—Question for the jury.*

Whether or not the place which the defendant furnished for the plaintiff to store his goods was reasonably safe is a question for the jury. *Nealand v. Boston & Maine R. R.*, 161 Mass. 67; *Nichols et al. v. Smith et al.*, 115 Mass. 332.

**Q.**

*Warehouse receipt—Negotiability.*

A warehouse receipt, even when in terms running to order and assigns, is not negotiable like a bill of exchange, but merely a symbol or representative of the goods themselves, and the rights arising out of such a receipt correspond, not to those arising out of the indorsement of a negotiable promise for the payment of money, but those arising out of the actual delivery of the property itself under similar circumstances. *Commercial Nat. Bank v. Bemis et al.*, 177 Mass. 95; *Stollenwerck v. Thacher*, 115 Mass. 224.

*Same—Same—Issued by private warehouseman.*

The plaintiff held a receipt, for goods stored, issued by one who was not a public warehouseman in the meaning of the laws of Massachusetts. The receipt was indorsed to the plaintiff as collateral security for the payment of a debt due him by the bailor. The receipt was not in terms negotiable. Subsequently, the goods represented by the receipt were attached in an action against the owner. *Held* that the plaintiff did not take title to the goods as against the attaching creditor. *Hallgarten et al. v. Oldham*, 135 Mass. 1.

*Same—Pledge of.*

Where one held a warehouse receipt, as pledgee, and in turn pledged the receipt to secure a claim to him, it was *held* that the title of the owner of the receipt was not impaired. There is no more reason to infer that one having possession of a receipt is the owner thereof than that his interest is something less than that. *Commercial Nat. Bank v. Bemis et al.*, 177 Mass. 95.

*Order on warehouseman—Refusal to deliver—Jury—Usage.*

The defendants, as public warehousemen, received for storage one hundred and fifty barrels of flour, portions of which were delivered from time to time, under plaintiff's orders, until but twelve barrels remained. The plaintiff delivered to the defendants an order for the *balance due*. With this order, the defendants refused to comply, insisting that the order should specify the number of barrels. It appeared that there was no express agreement, between the parties, that orders should specify the number of barrels, and that there was no such usage of trade in Boston. The court instructed the jury that the question of the propriety and reasonableness of the demand of the defendant was one for them to decide. *Held* that the order for the balance of the flour held by the defendants was sufficient; that they should have delivered the balance upon the presentation of the order and that they were liable for their failure to do so. *Porter v. Hills*, 114 Mass. 106.

**R.***Bill of lading—Defined—Shipper liable for freight charges.*

It is a settled doctrine that a bill of lading is a written simple contract between the shipper of the goods and the shipowner, the latter to carry the goods and the former to pay the stipulated compensation for the services performed. The shipper is the bailor and he is liable for the compensation to be paid the shipowner. The master is not bound, at his peril, to enforce payment of freight by the consignee. *Wooster et al. v. Tarr and another*, 8 Allen, 270; *Blanchard v. Page*, 8 Gray, 281.

*Same—Proof of loss—Burden of proof.*

In an action on a bill of lading, by which a shipowner promises to deliver the goods "in like good order and condition as received, dangers of fire and navigation excepted" after proof of loss and failure to deliver, the burden of proof is on him to bring such loss and failure to deliver within the exception. *Alden v. Pearson*, 3 Gray, 342.

*Same—Negotiability.*

A bill of lading, though not strictly a negotiable instrument,

like a bill of exchange, is the representative of the property itself and is the means by which property may be transferred in a manner equivalent to an actual delivery of the property. *Forbes et al. v. Boston & Lowell R. R. Co.*, 133 Mass. 154.

*Same—Not a “negotiable instrument.”*

A bill of lading is not a negotiable instrument in the original sense of the word, and indorsement and delivery of it for value operates to transfer the title of the goods described in it, but not as an assignment of the contract except by force of some statute. *Cox v. Central Vermont R. R.*, 170 Mass. 129; *Stollenwerck v. Thacher*, 115 Mass. 224; *Finn v. Western R. R.*, 112 Mass. 524.

*Same—As collateral.*

One who holds a bill of lading as collateral security for the payment of a debt has such title in the property represented as to enable him to recover of any one who wrongfully converts it. *Forbes et al. v. Boston & Lowell R. R. Co.*, 133 Mass. 154; *Chicago National Bank v. Bayley*, 115 Mass. 228; *DeWolf v. Gardener*, 12 Cush. 19; *Dows v. National Exchange Bank*, 91 U. S. 618.

*Same—Same—Fraud on the part of director of bank.*

The plaintiff, the owner of sugar, shipped the same to an agent for the purpose of sale. From the bill of lading it appeared that the goods had been shipped subject to the order of the consignee. The consignee pledged the bill of lading with the defendant bank, of which he was a director, as security for a large loan made to him by the bank, he being present at the directors' meeting which authorized the loan. It was shown that the bank acted in entire good faith in the matter. It was attempted, by the plaintiff, to impute the fraud of the consignee to the defendant bank. It was held that this could not be done, and judgment was accordingly given for the defendant. *Innernity et al. v. Merchants' National Bank*, 139 Mass. 332.

*Bill of lading—Exemption in—Burden of proof.*

Where there was a stipulation in a bill of lading that notice

of loss must be given within thirty days, the court *held* that the burden of proof was on the plaintiff to show that such stipulation was a just and reasonable one. Carriers may, by stipulation in bills of lading, limit their common-law liability if the effect is not to relieve them of the consequences of their own negligence, or that of their servants, and the contracts are, in themselves, just and reasonable. *Cox v. Central Vermont R. R.*, 170 Mass. 129; *Lewis v. Smith*, 107 Mass. 334; *Liverpool & Great Western Steam Co. v. Phenix Ins. Co.*, 129 U. S. 397; *Bank of Kentucky v. Adams Ex. Co.*, 93 U. S. 174; *Hoadley v. Northern Transportation Co.*, 115 Mass. 304.

## CHAPTER XXII.

**MICHIGAN.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Who deemed to be a warehouseman :**

*The People of the State of Michigan enact:* That every person, firm, company, association, warehouse company or other corporation, lawfully engaged in the business of storing for hire goods, wares, merchandise, grain, flour, provisions, or other products, commodity or personal property, excepting persons or companies engaged in the business of storing grain in elevators, shall be deemed and held to be a warehouseman under this act. Compiled Laws, Mich. 1897, ch. 127, sec. 1.

**Warehouseman to have a lien on goods :**

Every warehouseman shall have a lien on all goods, wares, merchandise and other personal property deposited and stored with him, for his storage charges, and for all moneys advanced by him for cartage, labor, insurance, weighing, cooopering and other necessary expenses to or on such property; and such lien shall extend to and include all legal demands for storage and expenses paid as above, which he may have against the owner of said property; and it shall be lawful for him to detain said property until such money is paid. *Id.* ch. 127, sec. 2.

**Above act construed—Lien extends to all such charges against the owner—if possession be lost and subsequently regained, lien revives :**

A warehouseman lost possession of goods which were intrusted to him and at the time his charges for storage were unpaid; subsequently he obtained possession of the goods. In an action against him to recover possession of the goods the warehouseman claimed a lien thereon for his charges due on the former storage as well as for the latter; it was *held* that under

this statute he had a valid lien against the goods for his charges for both the former and latter storage. *Kaufman v. Leonard* (Wayne County Circuit Court, May, 1903, not yet reported) following *Stillman v. Kimberly*, 121 N. Y. 393, aff'd 53 Hun, 531.

#### **Lien on portion of goods :**

Where a quantity of goods, wares, merchandise, or other personal property is stored at one time and as one parcel, and portions of it are from time to time delivered without payment of storage charges, said warehouseman shall have a lien upon the portion left for storage and for expenses paid as above on the whole. Compiled Laws, Mich. 1887, ch. 127, sec. 3.

#### **Warehouseman to have a lien on property for advanced charges—When not liable for damage to property :**

Wherever, in pursuance of any custom or by request of the owner or consignee, such warehouseman on receiving from a common carrier goods, wares or merchandise, or other personal property in apparent good order, may advance the freight due to said carrier on said property, he shall have a lien on said property for the amount of said freight paid, in addition to his own charges for storage and expenses as above; and if he shall deliver said goods to the owner or consignee without payment, he may afterwards recover of such owner or consignee the amount of said storage paid. And if the property has been injured before coming to the possession of said warehouseman, which injury is not apparent or known to him before or at the time of receiving the property, the owner or consignee must look to the carrier, and cannot recoup his damages in an action by the warehouseman. *Id.* ch. 127, sec. 4.

#### **Lien on property :**

Whenever any warehouseman shall, at the request of the owner of personal property stored with him, and during the time that said property so remains in storage, pay any charges or liens on said property, or loan any money to said owner on said property, and the fact and the amount of said loan shall be specified in or indorsed on the warehouse receipt given for said property, said warehouseman shall have a lien on said property for the amount of said advance or loan and interest,

and this lien shall be good as against any assignee of said receipt, and as against every subsequent purchaser or incumbrancer of said property. *Id.* ch. 127, sec. 5.

**Lien shall be paramount to that of a chattel mortgage—Right of mortgagee :**

The lien of a warehouseman for customary storage charges, and for necessary expenses paid in reference to the stored property, as above specified, shall be paramount to that of a chattel mortgage of the property in all cases where said mortgage shall have been made after said goods shall have been received for storage by said warehouseman. But this shall not deprive the mortgagee of the right which he might otherwise have of taking possession of the goods under his mortgage, upon paying the charges up to the date of taking such possession. *Id.* ch. 127, sec. 6.

**Record of property to be kept—Receipt :**

Every warehouseman shall keep a record book, in which shall be entered immediately upon its receipts, a description of all property deposited with him for storage, including the brand or distinguishing marks on such property, together with the date of the reception of said property and the name and address of the owner thereof. And every receipt given for any such property shall also contain the same particulars, and shall be evidence in any action against said warehouseman. *Id.* ch. 127, sec. 7.

**Receipts negotiable—Original receipt to be surrendered when—Proviso as to “non-negotiable receipts” :**

Warehouse receipts shall be negotiable, and may be transferred by indorsement and delivery thereof, and said indorsement may be either in blank or to the order of another. Such indorsement shall be deemed to be a warranty that the indorser has good title and lawful authority to sell the property named in such receipt subject, however, to the lien of the warehouseman for freight and charges on said property. No property covered by such receipt or voucher shall be delivered by said warehouseman except on the surrender and the cancellation of said original receipt or voucher; or in case of partial sale

or release of the said property, by the written assent of the holder of said receipt or voucher indorsed thereon: *Provided*, That all warehouse receipts or vouchers which shall have the words "non-negotiable" plainly written, printed or stamped on the face thereof shall be exempt from the provisions of this section. *Id.* ch. 127, sec. 8.

**Receipt not to be issued for property not actually stored :**

No warehouseman shall issue any receipt or voucher for any goods, wares, merchandise or other personal property to any person or persons purporting to be the owner or owners thereof, unless such property shall have been actually received into store or on the premises of such warehouseman, and shall be in store or on the premises as aforesaid, and under his control, at the time of issuing such receipt or voucher. *Id.* ch. 127, sec. 9.

**Receipt not to be issued as security for money loaned :**

No warehouseman shall issue any receipt or voucher for any personal property to any person, or persons or corporation as security for money loaned or for other indebtedness or indemnity, unless such property so received for shall be, at the time of issuing such receipt or voucher, the property, without incumbrance, of said warehouseman, and shall be actually in store and under the control of said warehouseman at the time of giving such receipt or voucher, and if such property be encumbered by prior lien, then the character, extent and amount of that lien shall be fully set forth and explained in the receipt. *Id.* ch. 127, sec. 10.

**Duplicate receipt :**

No warehouseman shall issue any second or duplicate receipt for any goods, wares, merchandise or other personal property while any former receipt or voucher for any such property as aforesaid, or any part thereof, shall be outstanding and uncancelled, without writing or stamping in ink across the face of the same "duplicate." *Id.* ch. 127, sec. 11.

**Return of receipt :**

No warehouseman shall sell or encumber, ship, transfer, or in

any manner remove beyond his immediate control, any goods, wares, merchandise, or other personal property for which a receipt shall have been given by him as aforesaid, whether received for storing, shipping, grinding, manufacturing or other purposes, without the return of such receipt. *Id.* ch. 127, sec. 12.

#### **Penalty for violation of provisions of this act :**

Any warehouseman who shall willfully violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two thousand dollars in amount, or by imprisonment in the state prison or county jail not exceeding two years, or by both such fine and imprisonment; and all, and every person or persons aggrieved by the violation of any of the provisions of this act, may have and maintain an action at law against the person or persons violating any of said provisions, to recover the damages which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted of misdemeanor as aforesaid under this act or not. *Id.* ch. 127, sec. 13.

#### **When goods may be sold—Proviso :**

Every warehouseman who shall have had in his possession any goods, wares, merchandise or other personal property, by virtue of any agreement or warehouse receipt for the storage of the same, on which, or any part thereof, shall be due one year's storage, may at any time thereafter proceed to sell said property in the manner provided in this act: *Provided, however,* That in case of property received from a common carrier as mentioned in section four of this act, upon which property said warehouseman shall have advanced freight charges, and said freight charges shall not be repaid within three months, he may proceed to sell said property at any time after said period of three months. *Id.* ch. 127, sec. 14.

#### **Notice of sale of property—How served :**

Before any such sale shall be made, at least thirty days' written or printed notice shall be given to the person or persons

in whose name or names such property was stored, notifying him or them of the default in payment of such storage charges or advances, if made on said property, and to pay the arrears or amount due, and in case of default in so doing that such goods, wares, merchandise or other personal property will be sold to pay said charges and advances, at the time and place to be specified in such notice. Such notice may either be served personally upon such person or persons, or sent to him or them by mail, postpaid, addressed to the place of residence given at the time of storing said goods or subsequently, in writing to the warehouseman. In the event that the person or persons storing such goods or merchandise shall have parted with the same, and the purchaser shall have notified the warehouseman, with his address, such notice shall be given to such transferee as well as to the person storing the goods. *Id.* ch. 127, sec. 15.

#### **Notice of sale to be published in newspaper:**

Before any such sale shall be made, notice thereof shall also be given by publication once a week for three successive weeks before the time of such sale, in a newspaper published in the county where such sale is to take place. Said notice shall specify the time and place of sale, a description of the property, the name of the owner and also of the transferee, if any. Copies of said notice shall also be posted within said time in four of the most public places in the city, village or township where said sale shall be held. *Id.* ch. 127, sec. 16.

#### **Time and place of sale—Proceeds of sale:**

Such sale shall be by public auction to the highest bidder, and shall be held between the hours of nine in the forenoon and six in the afternoon, and may be held either at the warehouse or other place of deposit of said property. From the proceeds of sale, said warehouseman may retain his charge for storage of the property and any advances made thereon by him, and interest, and the expenses of advertising and sale. Said property may be sold in bulk or in parcels, according to the discretion of the warehouseman, with the view of obtaining as large a price as possible for the same. *Id.* ch. 127, sec. 17.

**Record of sale to be kept—Surplus of sale to be paid to county treasurer :**

Such warehouseman shall make an entry in a book kept for that purpose, of all sales made as aforesaid, and of the surplus of the proceeds of the sale, if any, and such balance or surplus may be paid over to such person or persons entitled thereto, within thirty days after such sale. After the expiration of said thirty days, such balance or surplus, if not called for by the owner, shall be paid by such warehouseman to the county treasurer of the county in which such sale was made and said warehouseman shall at the same time file with said treasurer an affidavit, in which shall be stated the name and place of residence, so far as the same are known, of those persons whose goods or merchandise have been sold, the articles sold and the prices at which they were sold, the name and residence of the auctioneer making the sale, together with a copy of the published notice. *Id.* ch. 127, sec. 18.

**Statement to be filed :**

The county treasurer shall make an entry of the amount received by him and the time when received, and shall have in his office such statement so delivered to him by said warehouseman. *Id.* ch. 127, sec. 19.

**When owner may recover :**

If the owner of the property sold, or his legal representatives, shall at any time within six years after such money is deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he shall receive from such treasurer the amount so deposited with him. *Id.* ch. 127, sec. 20.

**Amount to be deposited :**

If the amount so deposited with any county treasurer is not claimed by the owner thereof, or his legal representatives, within the said six years, the same shall belong to the county and shall be credited to the general fund thereof. *Id.* ch. 127, sec. 21.

**Perishable property may be sold :**

Property of a perishable kind and subject to decay by keeping,

consigned or left for storage in the manner before mentioned, if not taken away within thirty days after it is left, may be sold after giving ten days' notice thereof in the manner above provided, but the sale shall be conducted and the proceeds of the same applied in the manner before provided in this act: *Provided, however,* That any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold without notice. The owner of such property shall be liable to said warehouseman, for any excess of freight and storage charges above the amount realized from the sale of said property. *Id.* ch. 127, sec. 22.

**Warehouseman may replevy goods after delivery :**

Any warehouseman who has parted with his possession to stored property, through fraud or mistake, to any person not entitled to the possession of the same, may after demand maintain an action of replevin for the same, or, if the property cannot be found, an action of assumpsit or trover against the person converting or removing it. In case of replevin, if there was no fraud in obtaining such possession, the plaintiff shall first tender to the defendant the freight or other proper charges which may have accrued at the time of the demand of possession. *Id.* ch. 127, sec. 23.

**When property is taken by attachment warehouseman to give notice to owner—Notice to be delivered personally or by mail :**

Whenever any goods, wares, merchandise or other personal property shall be taken from the possession of any warehouseman, by writ of attachment or replevin, or other legal process, said warehouseman shall at once give written or printed notice thereof to the owner or person named in the warehouse receipt given for said property, or in case said warehouseman shall have received notice of any transfer of said property, and of the name and address of the transferee, he shall also give to said transferee like notice of said suit. Said notice may be delivered personally or sent by registered mail, postpaid. If such notice shall be given as aforesaid, said warehouseman shall not in any way be liable on account of said suit to said holder or trans-

eree of said property, or the holder of any receipt or voucher given for the same, saving and reserving to such owner or holder the legal remedies for the recovery of the said goods, wares, merchandise and other personal property from any person unlawfully detaining the same, or for damages against any person unlawfully taking the same. *Id.* ch. 127, sec. 24.

**Warehouseman not to be responsible for damages caused by fire:**

No warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same. *Id.* ch. 127, sec. 25.

**When owners may examine property:**

All persons owning property, or who may be interested in the same, stored in any public warehouse, at all times during ordinary business hours, shall, on production of the warehouse receipt, be at full liberty to examine such property, and all proper facilities shall be extended to such person by the warehouseman, his agents and employees for such examination. *Id.* ch. 127, sec. 26.

**Warehouse companies—Authority to incorporate:**

*The People of the state of Michigan enact:* That any five or more persons, residents of this state, may associate themselves together as a body corporate, for the purpose of constructing, owning and controlling warehouses for the storage of grain and other commodities. *Id.* ch. 183, sec. 1.

**Conditions—Affidavits required :**

Such persons shall, under their hands, and seals, make and subscribe to a certificate, which shall specify: First, the name and the business of said association; second, the amount of the capital stock thereof, and the amount of cash capital actually paid in; third, the number of shares into which said capital stock shall be divided, and it is hereby provided that such shares shall not be less than twenty-five dollars each; fourth, the names of the stockholders, their respective residences, and the numbers of shares held by each person; fifth, the amount of all

property, real and personal, that may be held by such corporation; sixth, the term of the existence of said corporation, not to exceed thirty years.

Which certificate shall be verified by the affidavits of the persons subscribing the same, and be acknowledged before some officer authorized to take the acknowledgment of deeds, and shall be recorded in the office of the secretary of state, and in the office of the clerk of the county in which such corporation is located. *Id.* ch. 183, sec. 2.

**Body corporate—Powers, etc.—Limit of property—Proviso :**

Upon compliance by such persons with the provisions of the preceding section, such association shall be and is hereby declared a body corporate, empowered to hold and possess so much real and personal estate that may be purchased by it, or that may be given, granted, or devised to it as a corporation, in accordance with the provisions of law at the time such gift, grant or devise shall take effect, as may be necessary for the use and occupation of said corporation for the purposes of its business, not to exceed (exceeding) in value two million dollars: *Provided*, That all the property of such corporation shall be subject to taxation, and shall be used for no other purpose than the legitimate business of said corporation as hereinafter stated. *Id.* ch. 183, sec. 3.

**Right to build, and receive grain, etc., on storage :**

Any corporation formed under the provisions of this act is hereby authorized to erect a warehouse or warehouses, on any portion of the real estate that may be owned or acquired by it in accordance with the preceding section, and to receive for storage therein grain and other commodities, to fix the price for such storage, and to make all necessary rules and regulations for the management of its said business. *Id.* ch. 183, sec. 4.

**Manner of calling the first meeting—Election of officers—Proviso :**

When any corporation shall be formed under this act, any three of those associated may call the first meeting of the corporation, at such time and place as they may appoint, by giving

notice thereof, by publishing the same two or more times in some newspaper printed in the county in which the place of business of said corporation is located, at least fifteen days before the time appointed for such meeting; at which meeting, or at any adjourned meeting thereof, the stockholders of said corporation may elect such officers of said corporation as they shall deem necessary for the proper management of the property and business of said corporation, and may also make all necessary by-laws and regulations for the proper management of their affairs: *Provided*, That said by-laws and regulations shall be in conformity with the provisions of chapter seventy-three of the compiled laws relative to corporations. *Id.* ch. 183, sec. 5.

#### **Other provisions :**

All corporations formed under this act shall be subject to the general provisions of chapter seventy-three of the compiled laws, in all matters not herein enumerated and specified so far as the same may be applicable thereto. *Id.* ch. 183, sec. 6.

#### **Disposition of unclaimed property—Description and date of reception of property to be entered in certain cases :**

Whenever any personal property shall be consigned to, or deposited with any forwarding merchant, wharf keeper, warehouse keeper, tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, and other personal property, such consignee or bailee shall immediately cause to be entered in a book to be provided and kept by him for that purpose, a description of such property, with the date of the reception thereof. *Id.* ch. 148, sec. 1.

#### **When notice to be given to owner by letter :**

If such property shall not have been left with such consignee or bailee, for the purpose of being forwarded or otherwise disposed of according to directions received by such consignee or bailee, at or before the time of the reception thereof, and the name and residence of the owner of such property be known or ascertained, the person having such property in his custody shall immediately notify such owner by letter, to be directed

to him, and deposited in a post-office, to be transmitted by mail, of the reception of such property. *Id.* ch. 148, sec. 2.

**Notice when and how to be published :**

In case any such property shall remain unclaimed for three months after its reception as aforesaid, the person having possession thereof shall cause a notice to be published once in each week for four successive weeks in a newspaper published in the same county, if there be one, and if not, then in some paper published at the seat of government, describing such property, and specifying the time when it was so received, and stating that unless such property shall be claimed within three months from the first publication of such notice, and the lawful charges thereon paid, the same will be sold according to the statute in such case made and provided. *Id.* ch. 148, sec. 3.

**Proceedings if the property remain unclaimed :**

In case the owner or person entitled to such property shall not, within three months after the first publication of such notice, claim such property and pay the lawful charges thereon, including the expense of such publication, the person having possession of the property, his agent or attorney, may make and deliver to any justice of the peace of the same county, an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown. *Id.* ch. 148, sec. 4.

**Inventory and order for sale when to be made by justice :**

Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall make and annex to such inventory an order under his hand, that the property therein described be sold by any constable of the city or township where the same shall be, at public auction, upon due notice. *Id.* ch. 148, sec. 5.

**Constable to give notice and sell property :**

It shall be the duty of the constable receiving such inventory and order, to give ten days' notice of the sale, by posting up

written notices thereof in three public places in the city or township, and to sell such property at public auction for the highest price he can obtain therefor. *Id.* ch. 148, sec. 6.

**Return of constable :**

Upon completing the sale, the constable making the same shall indorse upon the order aforesaid a return of his proceedings upon such order, and deliver the same to such justice, together with the inventory, and the proceeds of the sale, after deducting his fees, which shall be the same as upon an execution. *Id.* ch. 148, sec. 7.

**Disposition of proceeds, etc. :**

From the proceeds of such sale, the justice shall pay the charges and expenses legally incurred in respect to such property, or a ratable proportion to each claimant, if there be not sufficient for the payment of the whole; and such justice shall ascertain and determine the amount of such charges in a summary manner, and shall be entitled to one dollar for each day's services rendered by him in such proceedings. *Id.* ch. 148, sec. 8.

**Inventory, etc., to be delivered to county treasurer :**

Such justice shall deliver to the treasurer of the county in which the property was sold, the affidavit, inventory and order of sale, and return herein before mentioned, together with a statement of the charges and expenses incurred in respect to such property, as ascertained and paid by him, with a statement of his own fees, and shall at the same time pay over to such treasurer any balance of the proceeds of the sale, remaining after payment of such charges, expenses and fees. *Id.* ch. 148, sec. 9.

**Entry, etc., to be made by treasurer :**

The treasurer shall file in his office, and safely keep all the papers so delivered to him, and make a proper entry of the payment to him of any moneys arising from such sale, in the books of his office. *Id.* ch. 148, sec. 10.

**When owner may receive amount deposited with treasurer :**

If the owner of the property sold, or his legal representatives

shall, at any time within five years after such moneys shall be deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him. *Id.* ch. 148, sec. 11.

**If amount not paid to owner, to be paid into state treasury :**

If the amount so deposited with any county treasurer shall not be paid to such owner or his legal representatives within the said five years, such county treasurer shall pay such amount into the state treasury, to the credit of the general fund. *Id.* ch. 148, sec. 12.

**Owners, etc., of factories, warehouses, etc., to provide fire escapes :**

It shall be the duty of the owner, proprietor, or lessee of any building, factory, mill, warehouse, or workshop, more than two stories in height, where male or female help is employed above the second story in such building, to provide suitable ladders, or such other fire escapes as may be deemed necessary, for the escape of such help or other persons occupying such building, in cases of fire, as provided in section four of this act. *Id.* sec. 5534.

**Shops, etc., not to be kept open on the first day of the week, etc. :**

No person shall keep open his shop, warehouse, or workhouse, or shall do any manner of labor, business, or work, or be present at any dancing, or at any public diversion, show, or entertainment, or take any part in any sport, any game, or play on the first day of the week. The foregoing provisions shall not apply to works of necessity and charity, nor to the making of mutual promises of marriage, nor the solemnization of marriages. And every person so offending shall be punished by a fine not exceeding ten dollars for each offense. *Id.* ch. 154, sec. 1.

**Burning in the night a meetinghouse, etc. :**

Every person who shall willfully and maliciously burn in the night-time, any meetinghouse, church, courthouse, college,

academy, jail, railroad depot, or other building erected for public use; or any banking house, warehouse, store, manufactory, or mill of another, being with the property therein contained, of the value of one thousand dollars; or any barn, stable, shop or office of another, within the curtilage of any dwelling house; or any other building by the burning whereof any building mentioned in this section shall be burnt in the night-time, shall be punished by imprisonment in the state prison for any term of years. *Id.* ch. 320, sec. 3.

**Burning of the same in the day-time :**

Every person who shall willfully and maliciously burn, in the day-time, any building mentioned in the preceding section, the punishment for which, if burnt in the night-time, would be imprisonment in the state prison for any term of years, shall be punished by imprisonment in the state prison not more than ten years. *Id.* ch. 320, sec. 4.

**Burning certain buildings, etc., in night or day time :**

Every person who shall willfully and maliciously burn, either in the night-time or in the day-time, any banking house, warehouse, store, manufactory, mill, barn, stable, shop, office, out-house, or other building whatsoever of another, other than is mentioned in the third section of this chapter, or any bridge, lock, dam or flume, or any ship, boat, or vessel of another, lying within the body of any county, shall be punished by imprisonment in the state prison not more than ten years. *Id.* ch. 320, sec. 5.

**Penalty for setting fire to buildings :**

Every person who shall set fire to any building mentioned in the preceding sections or to any other material with intent to cause any such building to be burned, or shall, by any other means or by soliciting any other person, attempt to cause any such building to be burned, whether such building is owner or occupied by himself or herself or by another, shall be punished by imprisonment in the state prison not more than fifteen years, or in the county jail not more than one year, or by a fine not exceeding one thousand dollars. *Id.* ch. 320, sec. 6.

**Penalty for breaking into, etc., office, warehouse, etc., in night-time :**

Every person who shall break and enter, in the night-time, any office, shop, store, saloon, railroad depot, warehouse, mill, schoolhouse or factory, not adjoining to or occupied with a dwelling house, or any railroad car, shop, boat or vessel within the body of any county, with intent to commit the crime of murder, rape, robbery, or any other felony or larceny, shall be punished by imprisonment in the state prison not more than fifteen years. *Id.* ch. 320, sec. 12.

**Penalty for entering dwellings, etc., in the night, without breaking, in day-time, etc. :**

Every person who shall enter in the night-time without breaking, or shall break and enter in the day-time, any dwelling house, or any outhouse thereto adjoining, kept therewith, or any office, shop, store, saloon, restaurant, barn, granary, railroad car, railroad depot, warehouse, mill or factory, or any ship, boat, or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, or any other felony or larceny, the owner of any other person lawfully therein being put in fear, shall be punished by imprisonment in the state prison not more than ten years. *Id.* ch. 320, sec. 13.

**Penalty for entering dwelling, etc., with intent to commit crime, etc., proviso as to penalty for unlawful entry in freight car to obtain carriage :**

Every person who shall enter any dwelling house in the night-time, without breaking, or shall break or enter in the day-time, any dwelling house, or any outhouse thereto adjoining and occupied therewith, or any church, office, shop, store, saloon, restaurant, barn, granary, railroad car, railroad depot, warehouse, mill, schoolhouse or factory, or any ship, boat or vessel lying within the body of any county, with intent to commit the crime of murder, rape, robbery or any other felony or larceny, shall be punished by imprisonment in the state prison not more than five years, or by a fine not exceeding five hundred dollars and by imprisonment in the county jail not more than one year: *Provided*, That every person who shall unlawfully break into any railroad freight car, or unlawfully enter the same without break-

ing, with intent to obtain carriage in such car, the same being a part of a freight train, shall be punished by a fine not exceeding fifty dollars, or imprisonment in the county jail not more than sixty days, or both such fine and imprisonment. *Id.* ch. 320, sec. 14.

**Stealing in day-time in dwelling, etc., or breaking in in the night and stealing in public building :**

Every person who shall steal in the day-time, in any dwelling house, office, store, shop, warehouse, mill, factory, ship, boat or vessel, or shall break and enter in the night-time, any meeting-house, church, courthouse, college, academy, or other building erected for public use, and steal therein, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year. *Id.* ch. 320, sec. 15.

**Embezzlement of goods, etc., which may be the subject of larceny—Deemed larceny :**

If any person to whom any money, goods, or other property which may be the subject of larceny, shall have been delivered, shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle, or fraudulently use such goods, money, or other property, or any part thereof, he shall be deemed by so doing to have committed the crime of larceny. *Id.* ch. 320, sec. 34.

**Above statute construed—Existence of lien, will not justify conversion—Hotel keeper—Actual conversion and intention essential :**

The fact that one was a guest at a hotel and that the proprietor thereof would have a lien upon the baggage of his guest for the amount of charges of the proprietor for board gives to the latter no authority to dispose of the property as his own. The contention that the hotel keeper had a lien on the baggage and that therefore he could not be guilty of larceny in relation thereto cannot be sustained under the above statute. An instruction to the jury to the following effect *held* to be correct, that in order to find a conversion they must find an actual conversion by the proprietor to his own use and also an intent

existing at the time of such act of conversion, to deprive the owner of his property therein and to use it himself; further, that if the proprietor acting under the belief that he had a lien on the goods for his charges and that therefore he had a right to dispose of the same and did so under this belief that this action on the part of the proprietor would negative an intent to deprive the owner of his goods. *People v. Husband*, 36 Mich. 306.

#### **Penalty for making fraudulent warehouse receipts :**

If any warehouseman or forwarding merchant or any other person, or the agent or clerk of any warehouseman or forwarding merchant or other person, shall knowingly execute and deliver to any person a receipt or certificate purporting to be for flour, wheat, pot or pearl ashes, or any grain, produce or thing of value, as being at the time of executing and delivering such receipt in possession of such warehouseman or forwarding merchant, or other person, or in store for the person or persons, co-partnership, or firm named in any such receipt or certificate, without being at the time of executing and delivering such receipt in the actual possession of such flour, wheat, pot or pearl ashes, or any grain, produce, or thing of value, as expressed in such certificate or receipt, such warehouseman, forwarding merchant, or other person, agent or clerk so executing and delivering any such receipt, or certificate shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding two thousand dollars, or imprisonment in the state prison not exceeding three years, or by both such fine and imprisonment, in the discretion of the court; and sending or forwarding to a person who shall be duly entitled or authorized to receive the same, by the public mails, or through the government post-office, or by the hands of any person or persons, any such receipt or certificate as aforesaid, shall be deemed to be a good and lawful delivery thereof, within the meaning of this section. Compiled Laws, Mich. 1897, ch. 320, sec. 35.

#### **Fraudulent disposition of property by agents, etc. :**

Whenever money, or any goods, wares, merchandise or other personal property, shall be delivered, committed or intrusted to, or put in charge of, any person or persons as agent or agents

with written instructions, or upon any written agreement signed by the party so instructed as agent, or such written instructions shall be delivered, or such written agreement shall be made, at any time after delivery to such agent or agents, of any money or goods, wares, merchandise, or other personal property, which instructions or agreements shall express the appropriation, purpose or use to which such money shall be applied, or the terms, mode or manner of the application or employment of such money, or which shall express or direct the disposition or use to be made by such agent, of any goods, wares, merchandise, or other personal property, so delivered or intrusted to such agent; if the person or persons to whom any such money or goods, wares or merchandise or other personal property shall be so delivered, committed or intrusted, shall purposely and intentionally apply, appropriate, dispose of, or use any such money or goods, wares, merchandise or other personal property in any other way or manner, or for any other purpose, use or intent, than such as shall be expressed in such written instrument or agreement touching the same, the person or persons so doing shall be deemed guilty of felony, and on conviction thereof before a competent tribunal, shall be subject to a fine not exceeding two thousand dollars, or imprisonment in the state prison for a term not exceeding three years, or by both such fine and imprisonment, in the discretion of the court. *Id.* ch. 320, sec. 36.

#### **Penalty for embezzlement of property received for :**

If any warehouseman or forwarder, or other person who shall have issued a receipt or certificate for property, as recited in the thirty-fifth section of this chapter, or shall receive property on deposit or for sale on a specific contract or understanding, and shall, after issuing said receipt or certificate, or receiving such property, embezzle, dispose of, or convert to his own use, such property or the moneys received on the sale of such property, contrary to such receipt or certificate, or to the previous contract or understanding, he shall be deemed guilty of a felony and on conviction thereof shall be punished by imprisonment in the state prison not more than five years, or by a fine not exceeding five thousand dollars, or by imprisonment in the county jail not more than one year. *Id.* ch. 320, sec. 37.

## DECISIONS AFFECTING WAREHOUSEMEN.

## B.

*Bailment and sale—Facts constituting bailment—Trover—Evidence as to usage.*

An action of trover was brought against the defendant, a warehouseman, for the recovery of the value of certain wheat stored with him. The defendant had delivered to the plaintiff a large quantity of wheat and this action was brought for the recovery of a quantity still due the plaintiff, which allegation was denied by the defendant. Evidence was received of the usage whereby wheat, so stored on similar receipts, was mixed with other wheat of like kind and quality and that a delivery of the same wheat is never expected, but only of similar wheat of the same quality. In the lower court, upon the above state of facts, judgment was rendered for the defendant on the ground that the plaintiff should have sought his remedy in *assumpsit*, and not in trover, the transaction not creating a bailment but amounting to a sale. It was *held*, on appeal, that the question of the admissibility of the evidence showing the usage as to the mixture of grain was a very doubtful one, but granting that such usage was known to the parties and was incorporated in their agreement, that the transaction nevertheless constituted a bailment and not a sale. *Erwin v. Clark*, 13 Mich. 10.

*Same—Same—Intention of parties in receipt construed—Usage.*

The plaintiff delivered wheat to the defendants, merchant millers, and received a receipt therefor in the following terms:

“No. 96                                   820 bus.                           Crescent Mills.

“GRAND RAPIDS, Mich., March 26, 1878.

“Received of William B. Ledyard by L. Byrne, 820 bushels number One wheat at owner’s risk from elements, at 10 cents less Detroit quotations for same grade when sold to us. Stored for —— days.

“HIBBARD & GRAFF.”

The wheat was all stored, with plaintiff’s knowledge, in bins from which the defendants drew from day to day for purposes

of their business and manufacture. No storage was ever charged and the dealings between the parties remained entirely unsettled and open until the failure of the defendants. Plaintiff then demanded his wheat and failing to obtain the same brought an action of replevin for the recovery thereof. The defendants undertook to show that the plaintiff demanded not the wheat but the price thereof, but on this point the jury decided against them. It was contended in behalf of the plaintiff that the transaction was a bailment and that it was at the option of the plaintiff to take the value at ten cents less than the Detroit quotations or to receive back the wheat or an equal amount of the same kind and quantity. It was *held* that the relations of the parties was to be determined from the receipt and that as long as the wheat was held by the defendants at the risk of the plaintiff it was a bailment and not a sale. That the plaintiff could have converted the bailment into a sale by notifying the defendants of his election to receive the price fixed according to the terms of the contract. Further, that if the receipts were issued by the defendants as warehousemen they stood for the goods for which they had been issued and the fair presumption was that the grain, or its equal in kind and quantity, was to be kept in the warehouse to meet the receipt on presentation, and that this presumption could only be overcome by some act unequivocal in its nature. Further, that usage can never vary the written stipulations of parties, though it may aid in the explanation of their terms and perhaps add incidents in respect to which they are silent. *Ledyard v. Hibbard et al.*, 48 Mich. 421.

## H.

*Lien for charges—By statute extends to all valid claims for storage, etc., against the order.*

Under sec. 2, chap. 127, Laws of 1897, it was *held* that a warehouseman has a valid lien for all claims which he may have against the *owner* of property deposited with him for storage charges and for all moneys advanced by him for cartage, labor, insurance, weighing, coopering and other necessary expenses to or on such property. That, therefore, where goods had been removed from the warehouse and possession thereof was afterwards obtained that the lien for former storage charges would

attach and that the warehouseman could hold such goods for storage charges and for other advances and charges mentioned in the statute. *Kaufman v. Leonard* (Wayne County Circuit Court, May, 1903, not yet reported) following *Stillman v. Kimberly*, 121 N. Y. 393, aff'd 53 Hun, 531.

### M.

*Pledge—Warehouse receipt—Issued against warehouseman's own goods.*

The defendant warehouseman issued to the plaintiff national bank as security for the payment of a note, a warehouse receipt for a large quantity of wheat. In this receipt it was stated that the defendant held to the account of the plaintiff wheat represented thereby, to be delivered in the wheat or its equivalent in flour upon the return of the receipt properly indorsed. It further appeared that at the date of this transaction the defendants were not only buying, selling, storing in their factory and shipping wheat on their own account, but were also receiving into their mills wheat to be stored for others for which they issued the customary warehouse receipt. The court instructed the jury that the receipt issued by the defendant to the plaintiff constituted a valid pledge in the nature of a mortgage of the property described therein as security for the note to which it referred. Under these facts the jury found that the defendants were the general owners of the wheat replevied and that the plaintiff had a special property therein to the amount of the unpaid loan. It was *held* on appeal that this instruction was correct, that the contention made in behalf of the defendants that there was not a valid pledge made of the wheat on the ground that the plaintiff never had possession thereof, which was essential to a pledge, could not be sustained; that the warehouse receipt passed the title to the wheat represented thereby and that there was a valid pledge thereof. The court further *held* that the mere fact that the receipt in question mentioned both number one and number two wheat did not constitute an indefiniteness which would vitiate the pledge although the quantity of each kind of wheat was not mentioned in the receipt. And that in the absence of any specification of the quantity of each kind that was to be held, the legal construe-

tion would entitle the pledgee to an equal amount of each kind if it remained unmanufactured. *Merchants' & Mfrs.' Bank of Detroit v. Hibbard et al.*, 48 Mich. 118.

**Q.**

*Elevator receipts—Valid tender by.*

An offer to deliver grain represented by elevator receipts, where title is in such receipts, *held* to be valid tender and that the delivery of such receipts would be a delivery of the grain represented thereby. *Gregory et al. v. Wendell et al.*, 40 Mich. 432.

**R.**

*Bill of lading—Indorsement—Effect of.*

Indorsement of a bill of lading is no more than an assignment of the shipper's obligation, and of the property called for by the bill. It involves no promise on the part of the indorser to do anything towards forwarding the property to its destination. *Maybee & Hasley v. Tregent*, 47 Mich. 495.

## CHAPTER XXIII.

## MINNESOTA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Consignee to keep record of personal property :**

Whenever any personal property is consigned to, or deposited with, any forwarding merchant, wharf keeper, warehouse keeper, tavern keeper, express company, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered, in a book kept by him, a description of such property, with the date of the reception thereof. G. S. 1866, ch. 19, sec. 15; G. S. 1878, ch. 19, sec. 11.

**Property may be sold—When :**

If any such property is not claimed and taken away within one year after the time it is so received, the consignee or bailee may at any time thereafter proceed to sell the same in the manner provided in this chapter. G. S. 1866, ch. 19, sec. 17; G. S. 1878, ch. 19, sec. 13.

**Notice of sale—How given :**

Before any such property is sold, if the name and residence of the owner thereof are known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving at his residence or place of doing business; but if the name and residence of the owner are unknown, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there is one, printed and published in the same county; if there is no such newspaper, then said notice shall be published in a newspaper printed and published at the capital of the state; and the last publication of such notice shall be at least eighteen days pre-

vious to the time of sale. G. S. 1866, ch. 19, sec. 18; G. S. 1878, ch. 19, sec. 14.

#### **Affidavit to be made and delivered to justice :**

If the owner or person entitled to such property does not take the same away, and pay the charges thereon after sixty days' notice has been given, the consignee or bailee, his agent or attorney, shall make and deliver to a justice of the peace of the same county an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property is known or unknown. G. S. 1866, ch. 19, sec. 19; G. S. 1878, ch. 19, sec. 15.

#### **Justice to make inventory :**

Upon the delivery to him of such an affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order under his hand, that the property therein described shall be sold by any constable of the county at public auction. G. S. 1866, ch. 19, sec. 21; G. S. 1878, ch. 19, sec. 17.

#### **Constable to give notice of sale :**

The constable receiving such inventory and order shall give ten days' notice of the sale, by posting up written notices thereof in three or more places in such county, and shall sell such property at public auction to the highest bidder, in the same manner as provided by law for sale under executions from justices' court. G. S. 1866, ch. 19, sec. 21; G. S. 1878, ch. 19, sec. 17.

#### **To made a return to justice :**

Upon completing the sale, the constable shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceedings of the sale after deducting his fees. G. S. 1866, ch. 19, sec. 225; G. S. 1878, ch. 19, sec. 18.

#### **Proceeds of sale—How disposed of :**

From the proceeds of such sale, the justice shall pay all legal

charges incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of said sale are not sufficient to pay all the charges, and the balance, if any, he shall immediately pay over to the treasurer of the county in which the same is sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges and expenses paid to each person. G. S. 1866, ch. 19, sec. 23; G. S. 1878, ch. 19, sec. 19.

#### **Duty of county treasurer:**

The county treasurer shall make an entry of the amount received by him and the time when received, and shall file in his office such statement so delivered to him by the justice. G. S. 1866, ch. 19, sec. 24; G. S. 1878, ch. 19, sec. 20.

#### **Money deposited to be delivered to owner:**

If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money is deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he shall receive from such treasurer the amount so deposited with him. G. S. 1866, ch. 19, sec. 25; G. S. 1878, ch. 19, sec. 21.

#### **Unclaimed money to belong to county:**

If the amount so deposited with any county treasurer is not claimed by the owner thereof or his legal representatives within the said five years, the same shall belong to the county, and may be disposed of as the board of commissioners direct. G. S. 1866, ch. 19, sec. 26; G. S. 1878, ch. 19, sec. 22.

#### **Perishable property—How sold:**

Property of a perishable kind and subject to decay by keeping, consigned or left in the manner before mentioned, if not taken away within thirty days after it is left, may be sold by giving ten days' notice thereof; the sale to be conducted, and the proceeds of the same to be applied, in the manner before provided in this chapter: *Provided*, That any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of the justice of the peace,

after inspection thereof as provided in section twenty of this chapter. G. S. 1866, ch. 19, sec. 27; G. S. 1878, ch. 19, sec. 23.

#### **Fees of justice and constable :**

The fees allowed to any justice of the peace under the provisions of this chapter shall be one dollar for each days' service, and to any constable the same fees as are allowed by law for sale upon an execution, and ten cents per folio for making an inventory of property. G. S. 1866, ch. 19, sec. 28; G. S. 1878, ch. 19, sec. 24.

#### **Unclaimed baggage, etc.—Delivery to warehouseman :**

When any personal baggage shall have remained, for a period of thirty days, in the possession of any carrier of passengers, at any station of such carrier in this state, to which it may have been carried in performance of the contract of such carrier relative thereto, or when any freight or merchandise shall have remained, for a period of sixty days, after notice given by mail to the consignee thereof, in possession of any common carrier, at any office or station of such carrier within this state, to which such freight or merchandise may have been consigned, then and in that case such carrier, upon payment of its just charges for the transportation and storage of the same, may deliver such baggage, freight or merchandise to any warehouseman or storage company doing business in this state. 1885, ch. 202, sec. 1; G. S. 1878, v. 2, ch. 19, sec. 27a.

#### **Storage lien :**

Any warehouseman or storage company receiving any property, as provided in section one of this act, shall provide suitable storage for the same; and such warehouseman or storage company shall have a lien upon such property for all charges paid to the carrier from which the same was received, and for all reasonable charges for handling, storage, insurance, and other expenses necessarily incurred in safely keeping the same, with legal interest on all thereof. G. S. 1885, ch. 202, sec. 2; G. S. 1878, v. 2, ch. 19, sec. 27b.

#### **Sale—Notice :**

If the owner of such property, or his agent, does not appear

and duly claim the same within twelve months from its receipt from the carrier, such warehouseman or storage company may proceed to sell the same, at public auction, to the highest bidder. A notice specifying the time and place of such sale shall be published at least once in each week for three successive weeks prior to such sale, in a newspaper printed and published at the capital of the state, and also in a newspaper printed and published in the county where such sale is to take place, if there be such newspaper, and also mailing a copy thereof to the owner, if his address be known, and by posting a copy of the same in three public places in the town, city, or village where the property is to be sold. G. S. 1885, ch. 202, sec. 3; G. S. 1878, v. 2, ch. 19, sec. 27c.

#### **Sale—Proceeds :**

The proceeds of all sales made under the authority of this act, or so much thereof as may be necessary, shall be applied to the payments of all reasonable charges of such warehouseman or storage company, and the expenses of such sale; and the surplus, if any, shall be immediately paid over to the treasurer of the county in which the property was sold, accompanied by a statement as provided in section nineteen of chapter nineteen of General Statutes of one thousand eight hundred and seventy-eight, which statement shall be filed and surplus disposed of in all respects as provided in sections twenty, twenty-one and twenty-two, of said chapter nineteen. 1885, ch. 202, sec. 4; G. S. 1878, v. 2, ch. 19, sec. 27d.

#### **Warehouseman—Bond :**

Before any warehouseman or storage company shall be entitled to the benefit of the provisions of this act, such warehouseman or storage company shall execute a bond to the state of Minnesota, with at least two sureties, to be approved by the governor of the state, in the sum of ten thousand dollars, conditioned for the faithful performance of all duties enjoined upon such warehouseman or storage company under the provisions of this act, which bond shall be for the use of any party interested, and shall be deposited in the office of the secretary of state. 1885, ch. 202, sec. 5; G. S. 1878, v. 2, ch. 19, sec. 27e.

**Act retrospective :**

The provisions of this act shall apply to all property now held by any carrier in this state, or which has been heretofore delivered to any warehouseman or storage company in accordance with the provisions of this act, as fully as though this act had been in force at the time of the receipt of such property by such carrier, warehouseman, or storage company. 1885, ch. 202, sec. 6; G. S. 1878, v. 2, ch. 19, sec. 27f.

**Lien of common carriers and stable keepers :**

Any person who is a common carrier, and any person who at the request of the owner or lawful possessor of any personal property carries, conveys or transports the same from one place to another, and any person who safely keeps or stores any personal property, and any keeper of a livery or boarding stable for horses, mules, cattle or stock, and any person who pastures or keeps the same, at the request of the owner or lawful possessor thereof, shall have the same lien for his charges for carrying, transporting, storing, keeping, supporting and caring for such property, and the same right to hold and retain possession thereof, and the same power of sale for the satisfaction of his reasonable charges and expenses upon the same conditions and restrictions as provided in the preceding section. 1889, ch. 199, sec. 2.

**Grain delivered for storage deemed a bailment :**

That whenever any grain shall be delivered for storage to any person, association or corporation, such delivery shall in all things be deemed and treated as a bailment, and not as a sale, of the property so delivered, notwithstanding such grain may be mingled by such bailee with the grain of other persons, and notwithstanding such grain may be shipped or removed from the warehouse, elevator, or other place where the same was stored. And in no case shall the grain so stored, and which such bailee may hereafter be required to keep on hand, be liable to seizure upon any process of any court in an action against such bailee. 1887, ch. 86, sec. 1; G. S. 1878, ch. 124, sec. 13.

**Receipt—Contents—Penalty for giving false receipt :**

Whenever any grain shall be deposited in any warehouse,

elevator, or other depositary for storage, the bailee thereof shall issue and deliver to the person so storing the same, a receipt or other written instrument, which shall, in clear terms, state the amount, kind and grade of the grain stored, the terms of storage, and if advances are made, the words "advance made"; which receipt shall be *prima facie* evidence that the holder thereof has in store with the party issuing such receipt, the amount of grain of the kind and grade mentioned in such receipt; and any warehouseman, proprietor of an elevator, or bailee, who shall issue any receipt or other written instrument for any grain received for storage, which shall be false in any of its statements, shall be guilty of a misdemeanor, and shall upon conviction be punished by a fine not exceeding three hundred dollars, or imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment. 1876, ch. 86, sec. 2; G. S. 1878, ch. 124, sec. 14.

#### **Full quantity and grade to be delivered :**

It shall be the duty of every person, association or corporation receiving any grain for storage, upon the demand of the bailee, or his assigns or representatives, and tender of all charges for storage and money advanced by the bailee, and upon the faith and credit of such bailment, and offer to surrender and (any) receipt or other written instrument evidencing the receipt of such grain for storage, to deliver to the person entitled thereto a quantity of grain equal in amount and of the kind and grade delivered to such bailee. Every person and every member of any association or corporation who shall, after demand, tender and offer, as provided in section three of this act, willfully neglect or refuse to deliver to the person making such demand, the full amount of grain of the kind and grade which such person is entitled to demand of such bailee, shall be deemed guilty of larceny, and shall be punished by fine or imprisonment, or both, as is prescribed by law for the punishment of larceny. 1876, ch. 86, sec. 3; G. S. 1878, ch. 124, sec. 15.

#### **Same—Action for failure to redeliver :**

Whenever, upon any demand, tender or offer, as provided in section three of this act, any such bailee shall neglect or refuse

to deliver any grain received for storage, or a quantity of grain equal in amount and of the same kind and grade as received, any such bailor, or his assignes or representatives, may commence in any court having jurisdiction thereof, an action against such bailee, to recover possession of a quantity of grain equal in amount and of the same kind and grade as that delivered to such bailee, and in every action it shall be the duty of the sheriff or other proper officer, to take into his possession, from the warehouse of such bailee, or other place where he may have the same, a quantity of grain equal in amount and of the same grade as that specified in the affidavit made on writ issued in such action. Such action shall be commenced and prosecuted, if in district court, in the manner provided in actions for the claim and delivery of personal property; and if in justice courts, in the manner provided in actions for replevin. 1876, ch. 86, sec. 4; G. S. 1878, ch. 124, sec. 16.

#### **Warehouse receipts, etc., negotiable—Exception :**

Warehouse receipts, given for any goods, wares or merchandise, grain, flour, produce or other commodity, stored or deposited with any warehouseman, or other person or corporation in this state, or bills of lading, or receipt for the same, when in transit by cars or vessels to any such warehouseman, or other person, shall be negotiable, and may be transferred by indorsement and delivery of such receipt or bill of lading; and any person to whom the said receipt, or bill of lading, may be transferred, shall be deemed and taken to be the owner of the goods, wares or merchandise therein specified, so as to give security and validity to any lien created on the same, subject to the payment of freight and charges thereon: *Provided*, That all warehouse receipts, or bills of lading, which shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this act. 1876, ch. 86, sec. 5; G. S. 1878, ch. 124, sec. 17.

#### **No delivery, etc., without authority of owner :**

No person receiving or holding grain in store shall sell or otherwise dispose of, or deliver out of the storehouse or warehouse where such grain is held or stored, the same, or any part

thereof, without the express authority of the owner of such grain and the return of the receipt given for the same, except as herein provided. 1876, ch. 86, sec. 6; G. S. 1878, ch. 124, sec. 18.

#### **Different grades not to be mixed, etc. :**

It shall be unlawful for any warehouseman, or owner or keeper of any elevator, or any agent of either, to mix together any grain of different grades, so received in store, or to select different qualities thereof of the same grade for the purpose of storing or delivering the same, or attempt to deliver grain of one grade for another, or in any way to tamper with any grain of other persons while in his possession or custody, with a view to securing any profit to himself, or any one, without the consent of the owner. 1876, ch. 86, sec. 7; G. S. 1878, ch. 124, sec. 19.

#### **Penalties :**

Any warehouseman or other person violating any of the provisions of section six or section seven of this act, shall be deemed guilty of a felony, and upon conviction shall be fined in a sum not over one thousand dollars or imprisonment in the state prison of this state not exceeding five years, or both. 1876, ch. 86, sec. 8; G. S. 1878, ch. 124, sec. 20.

#### **Maximum rate for handling grain in elevators, etc.—Who not to be inspectors :**

It shall not be lawful for any railroad company or person, association or corporation engaged in the business of keeping an elevator or warehouse situated upon the line of any railroad in this state, for receiving and handling grain for other persons, to charge any greater sum than two cents per bushel for receiving, elevating, handling and delivering such grain; nor shall it be lawful for any such railroad company, person, association or corporation to employ or allow any person to act as inspector of the grain received into their elevator or warehouse who is in any manner directly or indirectly interested in the purchase or shipping thereof. 1874, ch. 31, sec. 1; G. S. 1878, ch. 124, sec. 7.

#### **When railroad company refuses to handle grain at legal rate—Private persons, etc., may erect elevators, etc. :**

When any railroad company shall refuse to receive, store,

handle and deliver grain, at any station on the road, at the rates provided in section one of this act, then in such case, said railroad company shall, upon demand, allow any person, association or corporation, to erect and maintain, at such station, adjoining the railroad track, or side-track, warehouses to receive, store and ship grain; or, at the option of the railroad company, such company shall build and maintain a side-track to and for the use and accommodation of any warehouse near the station. And no person keeping a warehouse or elevator shall in any case be compelled to pay the railroad company or any person keeping any other warehouse or elevator, any sum or compensation for or on account of the privilege of doing business. 1874, ch. 31, sec. 2; G. S. 1878, ch. 124, sec. 8.

#### **Penalty for violating this act :**

Any railroad company, or any keeper of any warehouse or elevator, or any person, who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than one hundred nor more than five hundred dollars, in the discretion of the court. 1874, ch. 31, sec. 3; G. S. 1878, ch. 124, sec. 9.

### CHAPTER 144, GENERAL LAWS, 1885.

An Act to regulate warehouses, inspection, weighing and handling of grain.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. *Duluth, Minneapolis and St. Paul elevators—Public.* All elevators or warehouses located at Minneapolis, St. Paul and Duluth, in this state, in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of the different lots or parcels cannot be accurately preserved, and doing business for a compensation, are hereby declared to be public warehouses.

Sec. 2. *Proprietors of public warehouses to procure license.* The proprietor, lessee, or manager of any public warehouse shall be required, before transacting any business, to procure from the railroad and warehouse commissioners, a license permitting such proprietor, lessee or manager to transact business as a

public warehouseman under the laws of this state; which license shall be issued by the railroad and warehouse commissioners upon written application, which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same; or, if the warehouse be owned or managed by a corporation, the name of the president, secretary and treasurer of such corporation shall be stated, and the said license shall give authority to carry on and conduct the business of public warehouse in accordance with the laws of the state, and shall be revocable by said commissioners upon a summary proceeding before the commissioners upon complaint of any person, in writing, setting forth the particular violation of law, and upon satisfactory proof, to be taken in such manner as may be directed by the commissioners.

Sec. 3. *Bonds required—Fee for license.* The person receiving license as herein provided shall file with the commissioners granting the same a bond to the state of Minnesota, with good and sufficient sureties, to be approved by said commissioners, in the penal sum of not less than ten thousand (10,000) dollars nor more than fifty thousand (50,000) dollars, in the discretion of the railroad and warehouse commissioners, for each warehouse licensed in the county, conditional for the faithful performance of his duties as a public warehouseman, and his full and unreserved compliance with all laws of this state in relation thereto. A fee for the issuance of each license of two (2) dollars shall be paid by the person applying for the same; *Provided*, That when any person or corporation procures a license for more than one warehouse in any county in the state, no more than one bond need be given.

Sec. 4. *Penalty for transacting business of public warehouseman without license.* Any person who shall transact the business of a public warehouseman without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been revoked (save only that he may be permitted to deliver property previously stored in such warehouse), shall on conviction by indictment be fined in a sum not less than one hundred (100) dollars nor more than five hun-

dred (500) dollars for each and every day such business is carried on, and the railroad and warehouse commissioners may refuse to renew any license, or grant a new one to any of the persons whose license has been revoked within one (1) year from the time the same was revoked.

**Above sections construed—License required of warehouseman storing his own grain exclusively :**

Where the defendant's warehouse was used for the storage of his own grain only, it was *held* that the weighing and grading of his grain was so related to the public interest that the legislature could properly require such owner to take out a license. *State ex rel., etc., v. W. W. Cargill Co.*, 77 Minn. 233, aff'd 180 U. S. 452.

Sec. 5. *Duties of public warehousemen—Discrimination prohibited—also mixing of grain without permission of owner.* It shall be the duty of every public warehouseman to receive for storage any grain, dry and in a suitable condition for warehousing that may be tendered to him in the usual manner in which such warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between persons desiring to avail themselves of warehouse facilities, such grain to be in all cases inspected and graded by a duly authorized inspector, and to be stored with grain of a similar grade. And in no case shall grain of a different grade be mixed together while in store, but if the owner or consignee so requests, and the warehouseman consents thereto, his grain of the same grade may be kept in a bin by itself apart from that of other owners, which bin shall thereupon be marked and known as a special bin. If a warehouse receipt be issued for grain so kept separate, it shall state on its face that it is in a special bin, and shall state the number of such bin, and all grain delivered from such warehouse shall be inspected, on its delivery, by a duly authorized inspector of grain. Nothing in this section shall be construed so as to require the receipt of any kind of grain into any warehouse in which there is not sufficient room to accommodate or to store it properly, or in cases where such warehouse is necessarily closed. The charges for inspection, upon receipt and delivery, shall be paid by the warehouse-

man, and may be added to the charge of the storage. The chief inspector may recover such charges of the warehouseman by an appropriate action in his name.

Sec. 6. *Public warehouseman shall issue numbered receipts for.* Upon application of the owner or consignee of grain stored in a public warehouse, the same being accompanied with evidence that all transportation or other charges which may be a lien upon the grain, including charges for inspection and weighing, have been paid, the warehouseman shall issue to the person entitled to receive it a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain in store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned on it has been received into store to be stored with grain of the same grade by inspection; and that it is deliverable upon the return of the receipt properly indorsed by the person to whose order it was issued, and the payment of proper charges for storage. All warehouse receipts for grain issued by the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." If the grain was received from railroad cars the number of each car shall be stated upon the receipt, with the amount it contained; if from barges or other vessels, the name of such craft; if from team or by other means, the manner of its receipt shall be stated on its face.

Sec. 7. *Receipts cancelled on delivery of grain by elevator, etc.* Upon the delivery of grain from store upon any receipt, such receipt shall be plainly marked across its face the word "Cancelled," with the name of the person cancelling the same, and shall thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. No warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipts.

Nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received. Nor shall more than one receipt be issued for the same lot of grain, except in cases where receipt for a part of a lot is desired, and then the aggregate receipt for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store, and the remainder is left, a new receipt may be issued for such remainder, but the new receipt shall bear the same date as the original, and shall state on the face that it is balance of receipt of the original number, and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store, and the new receipts shall express on their face that they are a part of another receipt or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued, as explanatory of the change; but no consolidation of receipts of dates differing more than ten (10) days shall be permitted, and all new receipts issued for old ones cancelled, as herein provided, shall bear the same date as those originally issued, as near as may be.

Sec. 8. *Liability of warehouse.* No warehouseman in the state shall insert in any receipt issued by him any language in anywise limiting or modifying his liabilities or responsibility as imposed by the laws of this state.

Sec. 9. *On return of warehouse receipt property shall be delivered.* On the return of any warehouse receipt by him properly indorsed, and the tender of all proper charges upon the property represented by it, such property shall be immediately deliverable to the holder of such receipt, and it shall not be subject to any further charges for storage after demand for such delivery shall have been made, and the property represented by such receipt shall be delivered within twenty-four (24) hours after such demand shall have been made, and the cars or vessels for

the same shall have been furnished. The warehouseman in default shall be liable to the owner of such receipt for damages for such default in the sum of one (1) cent per bushel, and in addition thereto one (1) cent per bushel for each and every day of such neglect or refusal to deliver; *Provided*, No warehouseman shall be held to be in default in delivery if the property is delivered in the order demanded, and as rapidly as due diligence, care and prudence will justify.

Sec. 10. *Statement of condition and management of elevators.* It shall be the duty of every owner, lessee and manager of every public warehouse in the state to furnish in writing under oath at such times as the board of warehouse commissioners shall require and prescribe, a statement concerning the condition and management of the business as such warehouseman.

Sec. 11. *Statement of kind and grade of grain. Daily reports to be furnished registrar.* The warehousemen of every public warehouse located at Minneapolis, St. Paul and Duluth, shall, on or before Tuesday morning of each week, cause to be made out, and shall keep posted up in the business office of his warehouse in a conspicuous place, a statement of the amount of each kind and grade of grain in store in his warehouse at the close of the business on the previous Saturday, and shall also on each Tuesday morning render a similar statement, made under oath, before some officer authorized by law to administer oaths, by one of the principal owners or operators thereof, or by the book-keeper thereof, having personal knowledge of the facts, to the warehouse registrar appointed as hereinafter provided.

They shall also be required to furnish daily to the said registrar a correct statement of the amount of each kind and grade of grain received in store in such warehouse on the previous day, also the amount of each kind and grade of grain delivered or shipped by such warehouseman during the previous day, and what warehouse receipts have been cancelled upon which the grain has been delivered on such day, giving the number of each receipt, and amount, kind and grade of grain received and shipped upon each; also how much grain, if any, was so delivered or shipped, and the kind and grade of it, for which warehouse receipts had not been issued, and when and how such un-

receipted grain was received by them, the aggregate of such reported cancellations and delivery of unreceipted grain corresponding in amount, kind and grade with the amount so reported delivered or shipped. They shall also at the same time report what receipts, if any, have been cancelled and new ones issued in their stead, as herein provided for. And the warehouseman making such statements shall, in addition, furnish the said registrar any further information regarding receipts issued or cancelled that may be necessary to enable him to keep a full and correct record of all receipts issued and cancelled and of grain received and delivered.

Sec. 12. *Secretary of commissioners.* It is hereby made the duty of the secretary of the railroad and warehouse commissioners to act as registrar in accordance with the spirit and intent of section eleven (11) of this act.

Sec. 13. *Schedule of rates for storage to be published—Maximum rates fixed.* Every warehouseman of public warehouses located at Minneapolis, St. Paul and Duluth, shall be required during the first (1st) week in September of each year to publish in one (1) or more of the newspapers (daily if there be such) published in the city or village in which such warehouse is situated, a table or schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased during the year, and such published rates, or any published reduction of them, shall apply to all grain received into such warehouse from any person or source, and no discrimination as to rates shall be made, directly or indirectly, by such warehouseman for the storage of grain. The maximum charge for storage and handling of grain, including the cost of receiving and delivering, shall be, for the first (1st) fifteen (15) days or part thereof, one and one-half ( $1\frac{1}{2}$ ) cents per bushel, and for each fifteen (15) days, or part thereof, after the first (1st) fifteen (15) days, one-half ( $\frac{1}{2}$ ) cent per bushel, and for continuous storage between the fifteenth (15th) day of November and the fifteenth (15th) day of May following, not more than four (4) cents per bushel.

Sec. 14. *Mixing of different grades prohibited—Not liable for damage by fire, or heating, when—Public notice when grain is*

*found out of condition—Liable for negligence—Grain sold at auction, when.* It shall not be lawful for any public warehouseman to mix any grain of different grades together, or to select different qualities of the same grade for the purpose of storing or delivering the same; nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain while in his possession or custody, with a view of securing any profit to himself or any other person. And in no case, even of grain stored in a separate bin, shall he be permitted to mix grain of different grades together while in store. He may, however, on request of the owner of any grain stored in a private bin, be permitted to dry, clean, or otherwise improve the condition or value of any such lot of grain, but in such case it shall only be delivered as such separate lot, or as the grade it was originally inspected when received by him, without reference to the grade it may be as improved by such process of drying or cleaning. Nothing in this section, however, shall prevent any warehouseman from removing grain while within his warehouse for its preservation or safe-keeping. No public warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same; nor shall he be held liable for damage to grain by heating, if it can be shown that he has exercised proper care in handling and storing the same, and that such heat or damage was the result of causes beyond his control; and in order that no injustice may result to the holder of grain in any public warehouse of Minneapolis, St. Paul and Duluth, it shall be deemed the duty of such warehouseman to dispose of, by delivery or shipping in the ordinary and legal manner of so delivering, that grain of any particular grade which was at first received by them or which has been for the longest time in store in his warehouse, and unless public notice has been given that some portion of the grain in his warehouse is out of condition, or becoming so, such warehouseman shall deliver grain of quality equal to that received by him, on all receipts as presented. In case, however, any warehouseman of Minneapolis, St. Paul or Duluth shall discover that any portion of the grain in his warehouse is out of condition, or becom-

ing so, and it is not in his power to preserve the same, he shall immediately give public notice by advertising in a daily newspaper in the city in which such warehouse is situated, and by posting a notice in the most public place (for such purpose) in such city, of its actual condition as near as he can ascertain. It shall state in such notice the kind and grade of the grain, and the bins in which it is stored, and shall also state in such notice the receipts outstanding, upon which such grain will be delivered, giving the numbers, amounts and dates of each, which receipts shall be those of the oldest dates then in circulation or uncancelled, the grain represented by which has not previously been declared or receipted for as out of condition; or if the grain longest in store has not been receipted for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, and the amount of it, and the enumeration of receipts, and identification of grain, as so discredited, shall embrace as near as may be, as great a quantity of grain as is contained in such bins. And such grain shall be delivered upon the return and cancellation of the receipts, and the unreceipted grain upon the request of the owner or persons in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition, but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act or neglect, the effect of which is to depreciate property stored in the warehouse under his control, shall be held responsible as at common law, or upon the bond of such warehouseman, and in addition thereto the license of such warehouseman, if his warehouse be in Minneapolis, St. Paul or Duluth, shall be revoked. Nothing in this action shall be so construed as to permit any warehouseman to deliver any grain stored in a special bin, or by itself, as provided in this act, to any but the owner of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition, as herein provided for, shall not be removed from store by the owner thereof within two (2) months from

the date of the notice of its being out of condition, it shall be lawful for the warehouseman, where the grain is stored, to sell the same at public auction, for account of said owner, by giving ten (10) days' public notice by advertisement in a newspaper (daily if there be such) published in the city or town where such warehouse is located.

Sec. 15. *All property in public elevators shall be subject to examination—Scales must be sealed.* All persons owning property, or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property, shall at all times during ordinary business hours, be at full liberty to examine any and all property stored in any public warehouse in this state. And all proper facilities shall be extended to such person by the warehouseman, his agents, and servants, for an examination, and all parts of the public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or of any authorized inspector of such property. And all scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized inspector, weighmaster, or sealer of weights and measures, at any time when required by any person or persons, agent or agents, whose property has been or is to be weighed, on such scales. The expense of such test by an inspector or sealer to be paid by the warehouse proprietor if the scales are found incorrect, but not otherwise. Any warehouseman who may be guilty of continuing to use scales found to be in an imperfect or incorrect condition by such examination and test, until the same shall have been pronounced correct and properly sealed, shall be liable to be proceeded against as hereinafter provided.

Sec. 16. *State weighmasters.* The railroad and warehouse commissioners shall appoint in all cities where there is state inspection of grain, a state weighmaster and such assistants as shall be necessary.

Sec. 17. *State supervision of weighing grain.* [Said state weighmaster and assistants shall, at the places of St. Paul, Minneapolis, Duluth and St. Cloud, supervise and have exclusive control of the weighing of grain and other property which

may be subject to inspection, except when otherwise ordered or directed by the party shipping the same, and the inspection of scales; and the action and certificates of such weighmaster and his assistants in the discharge of their aforesaid duties shall be conclusive upon all parties, either in interest or otherwise, as to the matters contained in said certificates.]

Amendment in brackets approved April 5, 1893.

Sec. 18. *Fees of same.* The board of railroad and warehouse commissioners shall fix the fees to be paid for the weighing of grain and other property, which fees shall be paid by the warehouseman, and may be added to the charges for storage.

Sec. 19. *Qualification—Bond.* Said state weighmaster and assistants shall not be a member of any board of trade or association of like character. They shall give bonds in the sum of five thousand (5,000) dollars conditioned for the faithful discharge of their duties, and shall receive such compensation as the board of railroad and warehouse commissioners shall determine.

Sec. 20. *Rules and regulations.* The railroad and warehouse commissioners shall adopt such rules and regulations for the weighing of grain and other property as they shall deem proper.

Sec. 21. *Penalty for refusing weighmaster access to scales, etc.* In case any person, warehouse, or railroad corporation, or any of their agents or employees shall refuse or prevent the aforesaid state weighmaster, or either of his assistants from having access to their scales, in the regular performance of their duties in supervising the weighing of any grain or other property in accordance with the tenor and meaning of this act, they shall forfeit the sum of one hundred (100) dollars for each offense, to be recovered in an action of debt before any justice of the peace in the name of the state of Minnesota, such penalty or forfeiture to be paid to the state treasurer for the benefit of the grain inspection fund, and shall also be required to pay all costs of prosecution.

Sec. 22. *Chief inspector to be appointed—Term of office—Bonds.* It shall be the duty of the railroad and warehouse commissioners to appoint a suitable person as chief inspector of grain in the state of Minnesota, who shall hold his office for the term of two (2) years, unless sooner removed by said railroad and ware-

house commissioners, who shall, before entering upon the duties of his office, take an oath of office, as in the case of other state officers, and shall execute a bond to the state of Minnesota, in the penal sum of ten thousand (10,000) dollars, with good and sufficient sureties, to be approved by the railroad and warehouse commissioners, conditioned that he will faithfully and impartially discharge the duties of the office of chief inspector according to law and the rules and regulations of said railroad and warehouse commissioners, and that he will pay all damages to any person or persons who may be injured by reason of his neglect or failure to comply with the law or the rules and regulations aforesaid.

Sec. 23. *Deputy inspectors.* Said chief inspectors shall appoint, subject to the approval of the railroad and warehouse commissioners, such number of deputy inspectors as may be required, one of which deputies in each of the cities of St. Paul and Minneapolis, and the village of Duluth shall be denominated and styled chief deputy.

Sec. 24. *Oath—Bond of deputies.* Such deputy inspectors shall take a like oath of office to that required from the chief inspector, and shall give a bond to the state of Minnesota in the penal sum of five thousand (5,000) dollars, with such good and sufficient sureties as may be approved by the railroad and warehouse commissioners, and conditioned in like manner as the railroad and warehouse commissioners require from the chief inspector.

Sec. 25. *Bonds to be filed with secretary of state.* The bonds given by the chief inspector and the deputy inspectors shall be filed in the office of the secretary of state for the state of Minnesota, and suit may be brought upon said bond or bonds in any court having jurisdiction thereof, for the use of the person or the persons so injured.

Sec. 26. *Chief inspector may remove deputy.* The chief inspector shall have power to remove any of the deputy inspectors at pleasure, and said deputy inspectors shall act under the immediate control and supervision of said chief inspector.

Sec. 27. *Rules for inspection.* The chief inspector of grain and all deputy inspectors shall be governed in their inspection duties by such rules and regulations as may be provided by the

railroad and warehouse commissioners; and the said commissioners shall have power to fix the rate of charges for inspection of grain, and the manner in which the same shall be collected, and which charges shall be regulated in such manner as will, in the judgment of said commissioners, produce sufficient revenue to meet the necessary expenses of the inspection service, and no more; said railroad and warehouse commissioners shall fix the amount of compensation to be paid to the chief inspector and deputy inspectors, and prescribe the time and manner of payment thereof; which compensation shall be paid out of the grain inspection fund, hereinafter created, on the order of the railroad and warehouse commissioners.

Sec. 28. *Restrictions on inspector and his deputies.* No chief inspector or deputy inspector of grain shall, during his term of service, be interested, directly or indirectly, in the handling, storing, shipping, purchasing, or selling of grain, nor shall he be in the employment of any person or corporation interested in the handling, storing, shipping, purchasing, or selling of grain.

Sec. 29. *Inspector may be removed from office, when.* Upon complaint, in writing, of any person to the railroad and warehouse commissioners, supported by reasonable and satisfactory proof, that the chief inspector, or any of his deputies, have violated any of the rules prescribed for his government, or has been guilty of any improper official act, or has been found inefficient or incompetent for the duties of his position, said person shall be by said railroad and warehouse commissioners immediately removed from office.

Sec. 30. *Penalty for acting as inspector without authority.* Any person who shall assume to act as an inspector of grain, who has not first been so appointed and sworn, shall be held to be an imposter, and shall be punished by a fine of not less than fifty (50) dollars, nor more than one hundred (100) dollars, for each and every attempt to so inspect grain, to be recovered before a justice of the peace in an action of debt in the name of the state of Minnesota for the use of any person choosing to sue.

Sec. 31. *Penalty for neglect of duty of inspector.* Any duly authorized inspector or deputy inspector of grain who shall be guilty of any neglect of duty, or who shall knowingly or care-

lessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect or duty or any improper performance of duty as such inspector of grain, or any person who shall improperly influence any inspector of grain in the performance of his duty as such inspector, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred (100) dollars, nor more than one thousand (1000) dollars, or shall be imprisoned in the county jail not less than thirty (30) days nor more than one (1) year, or both in the discretion of the court.

Sec. 32. *Charges for inspection to be a lien.* The charge for the inspection and weighing of grain shall be and constitute a lien on grain so inspected, and whenever such grain is in transit the said charges shall be treated as advanced charges, to be paid by the common carrier in whose possession the same is at the time of inspection.

Sec. 33. *Decision of inspector final unless appeal taken.* The decision of the chief inspector or any of the deputy inspectors as to grade of grain shall be final and binding on all parties, unless an appeal is taken from such decision as hereinafter provided.

Sec. 34. *Appeals to the railroad and warehouse commissioners.* In case any owner, consignee or shipper of grain, or any warehouse manager shall be aggrieved by the decision of the chief inspector or any of his deputies, an appeal may be had to the railroad and warehouse commissioners, and a decision of a majority of such commissioners shall be final, and the railroad and warehouse commissioners are authorized to make all necessary rules governing such appeal; *Provided*, That the party appealing shall pay to the chief inspector a sum not to exceed five (5) dollars per case before said case be entertained, which sum shall be refunded in case such case is sustained.

Sec. 35. *Grain need not go into any public warehouse.* In case any owner or consignee of grain shall be dissatisfied with the inspection of any lot of grain, or shall from any cause desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into any public warehouse (whether the property may have previously been

consigned to such warehouse or not) by giving notice to the person or corporation in whose possession it may be at the time of giving such notice; and such grain shall be withheld from going into store, and delivered to him, subject only to such proper charges as may be a lien upon it prior to such notice—the grain, in railroad cars, to be removed therefrom by such owner or consignee within twenty-four (24) hours after such notice has been given to the railroad company having it in possession; *Provided*, Such railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow such owner or consignee to receive his grain shall be deemed guilty of conversion, and shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such grain is not to be delivered into store may also be given to the proprietor or manager of any warehouse into which it would otherwise have been delivered; and if, after such notice, it be taken into store in such warehouse, the proprietor or manager of such warehouse shall be liable to the owner of such grain for double its market value.

Sec. 36. *Direction of the owner of grain must be obeyed.* It shall be unlawful for any proprietor, lessee, or manager of any public warehouse to enter into any contract, agreement, understanding, or combination with any railroad company or other corporation, or with any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage or for any other purpose, contrary to the direction of the owner, his agent or consignee.

Sec. 37. *"Minnesota Grades" to be established.* The railroad and warehouse commissioners shall, before the fifteenth (15th) day of September in each year, establish a grade for all kinds of grain bought or handled by any public warehouse in the state, which shall be known as "Minnesota Grades"; and the grades so established shall be published in some daily newspaper, in each of the three places of St. Paul, Minneapolis and Duluth, each day, for the space of one week.

Sec. 38. *Samples shall be furnished.* It shall be the duty of the chief inspector of grain to furnish any elevator or warehouse in this state standard samples of grain, as established by the

official inspection, when requested so to do by the proprietor, lessee or manager thereof, at the actual cost of such samples.

See. 39. *Commissioners to have supervision of grain business.* It will be the duty of the railroad and warehouse commissioners to assume and exercise a constant supervision over the grain interests of this state, to supervise the handling, inspection, weighing and storage of grain; to establish all necessary rules and regulations for the weighing, grading, inspection and appeal on inspection of grain, and for the management of the public warehouses of the state, as far as such rules and regulations may be necessary to enforce the provisions of this act or any law of this state in regard to the same; to investigate all complaints of fraud or oppression in the grain trade, and to correct the same as far as it may be in their power.

See. 40. *Rules and regulations to be published.* The aforesaid rules and regulations, not being contrary to the provisions of law, shall be published by said railroad and warehouse commissioners, in a daily paper in St. Paul, Minneapolis and Duluth, and shall be in force and effect until they shall be changed or abrogated by said commissioners in a like public manner.

Sec. 41. *All moneys collected shall be paid into state treasury.* All moneys collected by state grain inspectors, weighmasters and other officers, as herein provided for, shall by them be paid into the state treasury.

Sec. 42. *Duty of treasurer.* It shall be the duty of the treasurer of the state of Minnesota, to receive all moneys aforesaid and all fines and penalties collected by virtue of this act, and to keep a separate account of the same, and to pay the same on the order of the railroad and warehouse commissioners, and not otherwise.

See. 43. *Attorney general's duties—County attorney to prosecute.* The attorney general of the State of Minnesota shall be *ex-officio* attorney for the railroad and warehouse commissioners, and shall give them such counsel and advice as they may from time to time require, and he shall institute and prosecute any and all suits which such railroad and warehouse commissioners may deem expedient and proper to institute, and he shall render to such railroad and warehouse commissioners all counsel, ad-

vise and assistance necessary to carry out the provisions of this act according to the true intent and meaning thereof. In all criminal prosecutions against a warehouseman for the violation of any of the provisions of this act, it shall be the duty of the county attorney of the county in which such prosecution is brought to prosecute the same to a final issue.

Sec. 44. *Grain may be sold by sample.* Nothing in this act shall be so construed as to prevent any person from selling grain by sample, regardless of grades.

Sec. 45. *Chapters 95 and 99, Laws of 1879, repealed.* Chapters ninety-five (95) and ninety-nine (99) of the General Laws of eighteen hundred and seventy-nine (1879) are hereby repealed.

Sec. 46. *Conflicting laws repealed.* All acts and parts of acts, general or special, conflicting with this act are hereby repealed.

Sec. 47. *Appropriation.* The sum of one thousand (1,000) dollars, or so much thereof as is necessary to carry out the provisions of this act, is hereby appropriated out of any money in the state treasury not otherwise appropriated.

Sec. 48. *Old system to apply to grain in store prior to the passage of this act.* But the provisions of this act shall not change the liability of warehousemen on grain now in store, nor the inspection thereof; but said inspection shall be had under the same system under which it was received into store.

Sec. 49. *When to take effect.* This act shall take effect and be in force after the expiration of sixty (60) days after its passage.

Approved March 5, 1885.

Sec. 50. *Making St. Cloud a terminal point.* [That whenever the cities of St. Paul, Minneapolis and Duluth are named in this chapter, the name of St. Cloud shall be included, and the provisions of said chapter shall be construed to extend to said city of St. Cloud, to the same extent as to said cities of St. Paul, Minneapolis and Duluth.]

Amendment in brackets approved April 20, 1891.

Sec. 51. *Weighmasters to keep accurate account of all weighing.* [All state weighmasters and assistants provided for by this law and the amendments thereto shall be required to make true weights under the penalties hereinbefore provided, and in addi-

tion thereto keep a correct record of all weighing done by them at the places hereinbefore named, in which record shall be entered an accurate account of all grain or other property weighed, or the weighing of which was supervised by them or their assistants, giving the amount of each weight, the number of the car or cars weighed, if any, the initial letter of said car or cars, place where weighed, date of weighing and contents of car.]

Amendment in brackets approved April 5, 1893.

Sec. 52. *Weighmasters to furnish certificates of weight—Certificates to be prima facie evidence.* [Said weighmaster and assistants shall give upon demand to any person or persons having weighing done, a certificate under his hand and seal, showing the amount of each weight, number of car or cars weighed, if any, the initial of said car or cars, place where weighed, date of weighing and contents of car. And it is hereby provided that said weighmaster's certificate shall be admitted in all actions, either at law or in equity, as *prima facie* evidence of the facts therein contained, but the effect of such evidence may be rebutted by other competent testimony.]

Amendment in brackets approved April 5, 1893.

#### CHAPTER 123, GENERAL LAWS, 1897.

An Act to establish state weighing and inspection of grain at the city of Fergus Falls in the county of Otter Tail and the city of Winona in the county of Winona, and making said cities of Fergus Falls and Winona terminal points, and making all laws of this state that are applicable to the weighing and inspection of grain at the terminal points of St. Paul, Minneapolis, Duluth and St. Cloud, applicable to Fergus Falls and Winona.

Be it enacted by the legislature of the state of Minnesota:

Section 1. *Making Fergus Falls and Winona terminal points.* The cities (city) of Fergus Falls in the county of Otter Tail and the city of Winona, in the county of Winona, are hereby made and established as terminal points for the weighing and inspection of grain.

Sec. 2. All laws of this state applying, governing and regulating the weighing and inspection of grain at St. Paul, Minne-

apolis, Duluth and St. Cloud shall apply, regulate and govern the weighing and inspection of grain at the cities of Fergus Falls and Winona.

Sec. 3. This act shall be in force from and after its passage.

Approved April 14, 1897.

#### CHAPTER 30, GENERAL LAWS, 1897.

An Act to establish state weighing and inspection of grain at the city of Little Falls in the county of Morrison, and making said city of Little Falls a terminal point, and making all laws of this state that are applicable to the weighing and inspection of grain at the terminal points of St. Paul and Minneapolis, Duluth and St. Cloud applicable to Little Falls.

Be it enacted by the legislature of the state of Minnesota :

Section 1. *Making Little Falls a terminal point.* The City of Little Falls, in the County of Morrison, is hereby made and established a terminal point for the weighing and inspection of grain.

Sec. 2. All laws of this state applying, governing and regulating the weighing and inspection of grain at St. Paul and Minneapolis, Duluth and St. Cloud shall apply, regulate and govern the weighing and inspection of grain at the city of Little Falls.

Sec. 3. This act shall be in force from and after its passage.

Approved March 2, 1897.

#### CHAPTER 295, GENERAL LAWS, 1895.

An Act to exempt the scales of certain elevators, mills and railroad yards from the jurisdiction of city sealers of weights and measures.

Be it enacted by the legislature of the state of Minnesota :

Section 1. *Scales under supervision of state grain department.* That the scales at all elevators, mills and railroad yards operated by and under the control of a duly appointed state weigher, and which scales are directly under the supervision of the state grain weighing department, shall be exempt from the jurisdiction of city sealers of weights and measures.

Sec. 2. All acts or parts of acts inconsistent with this act are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved April 13, 1895.

#### CHAPTER 30, GENERAL LAWS, 1893.

An Act to provide for the purchase of a site and for the erection of a state elevator or warehouse at Duluth in this state for public storage of grain, and the regulation thereof, to publish a market report, and to appropriate money for that purpose.

Be it enacted by the legislature of the state of Minnesota.

Sec. 3. *Market price of grain and farm products, also freight rates on same, to be kept on file in office of commission—Weekly market report.* The said commission shall keep on file for public inspection publications showing the market price of grain and farm products in the markets of Liverpool, London, Paris, Hamburg, New York, Buffalo, Quebec, San Francisco, Chicago, Minneapolis and Duluth. Also the freight rates between said markets, either by railroad, lake, ocean or other means of transportation. They shall publish a weekly bulletin or market report showing the prices paid in said markets for farm products. Said market report to show the prices as reported by the publications received from the other cities for one week and immediately preceding the date of said publication, as near as practicable; also the rates of freight between Duluth and Minneapolis and said markets. Said bulletin to be kept on file in said institution and in the office of said commission in St. Paul; also to be furnished by mail to all persons who shall order the same and pay the price fixed by said commission, which shall not exceed one dollar per annum.

Sec. 16. This act shall take effect and be in force from and after its passage.

Approved April 18, 1893.

(All other sections of said act, from section one (1) to section fifteen (15), inclusive, providing for the purchase of a site and for the erection of a state elevator or warehouse at Duluth, in

this state, for public storage of grain and the regulation thereof, declared unconstitutional by the decision of the supreme court of Minnesota. See *Rippe v. Becker*, 56 Minn. 100.)

### CHAPTER 29, GENERAL LAWS, 1893.

An Act to provide for the care and protection of grain in cars at the several places designated by law as terminal points within the State of Minnesota.

Be it enacted by the legislature of the state of Minnesota :

Section 1. *Inspectors to examine condition of cars of grain—Inspectors—To close and reseal cars after inspection—Record.* It shall be the duty of the chief inspector of grain, and of any deputies as officials serving under him, before opening the doors of any cars containing grain upon their arrival at any of the several places designated by law as terminal points in this state, for the purpose of inspecting the same, to first ascertain the condition of any such car or cars, and determine whether any leakages have occurred while the said car or cars were in transit; also whether or not the end or side doors are properly secured and sealed, making a record of such facts in all cases and recording the same in a proper book to be kept for the purpose.

After such examination shall have been duly made and recorded, and the inspection of such grain has been made, it shall be the duty of the said officials of the state grain inspection department, above mentioned, to securely close and reseal such doors as have been opened by them, using a special seal of the said state grain inspection department for the purpose. A record of all original seals broken by said officials and the time when broken, also a record of all state seals substituted therefor and the time when such state seals were substituted, together with a full description of said seals, with their numbers, shall be made by the said officials.

Sec. 2. *Police protection to be furnished by railroad companies.* It shall be the duty of all railroad companies operating any lines of railroad at the terminal points of this state to furnish ample and sufficient police protection at each and all of their

several terminal yards and on their terminal tracks to securely protect all cars containing grain, while the same is in their possession, pending transfer and delivery of same, and it shall be the duty of such railroad companies to prohibit and restrain all unauthorized persons, whether under the guise of samplers, sweepers, or under any other pretext whatever, from entering or loitering in or about their respective railroad yards or tracks and from entering any cars of grain under their control, or removing grain therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of the within section.

*Sec. 3. Warehousemen at terminal points must protect cars received.* It shall be the duty of all warehousemen operating and controlling grain elevators and warehouses at any terminal point within this state, and it shall further be the duty of all persons, firms or corporations engaged in the manufacture of flour or other grain products at such terminal points, to furnish ample and sufficient protection to all grain in cars which may be in their possession and to properly care for all cars of grain consigned to their respective elevators, warehouses, mills or manufactories after delivery of same has been made by the railroad companies, and in case of shipment of grain in cars from such elevators, warehouses, mills or manufactories, the said persons shall fully protect and care for said cars of grain until delivery of same has been made to the railroad company.

*Sec. 4. Breaking seals a misdemeanor—Penalty.* Any person other than those charged by sections one, two and three of the within act with the care of the property described herein who shall tamper with or break any seals placed upon such cars of grain, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not less than ten dollars and not exceeding one hundred dollars, or by imprisonment in the county jail not less than ten days and not exceeding ninety days upon conviction.

*Sec. 5. Neglect to perform duties of this act.* If any person or persons mentioned in sections one, two and three of the within act shall neglect or fail to carry out the duties prescribed for

their government in said sections, he or they shall be liable to the owner for the full amount of actual loss or damage which said owner may suffer by reason thereof.

Sec. 6. *Shippers to affix cards—Failure to comply.* It shall be the duty of every shipper of grain by railroad to the terminal points within this state to fasten upon the inside of the door of every car so shipped by him, a card upon which shall be given the number and initials of such car, the date of shipment, and the exact weight of the grain in such car as ascertained and determined by such shipper.

In case of failure on the part of any shipper to comply with the provisions of this section, the weight of the grain in such car as ascertained and determined by the state weighmaster at the terminal point shall be taken as *prima facie* evidence of the amount of grain in such car contained.

Sec. 7. This act shall take effect and be in force from and after its passage.

Approved April 6, 1893.

#### CHAPTER 148, GENERAL LAWS, 1895.

An Act to regulate the receipt, storage and shipment of grain at elevators and warehouses on the right of way of railroads, depots grounds and other lands used in connection with such line of railway in the state of Minnesota, at stations and sidings, other than at terminal points.

Be it enacted by the legislature of the state of Minnesota:

Section 1. *Railroad elevators placed under railroad and warehouse commission—Must be licensed—License fees—Revoking license.* All elevators and warehouses in which grain is received, stored, shipped or handled and which are situated on the right of way of any railroad, depot grounds or any lands acquired or reserved by any railroad company in this state to be used in connection with its line of railway at any station or siding in this state, other than at terminal points, are hereby declared to be public elevators and shall be under the supervision and subject to the inspection of the railroad and warehouse commission of the state of Minnesota, and shall, for the

purposes of this act, be known and designated as public country elevators or country warehouses.

It shall be unlawful to receive, ship, store or handle any grain in any such elevator or warehouse, unless the owner or owners thereof shall have produced a license therefor from the state railroad and warehouse commission, which license shall be issued for the fee of one (1) dollar per year, and only upon written application under oath, specifying the location of such elevator or warehouse and the name of the person, firm or corporation owning and operating such elevator or warehouse and the names of all the members of the firm or the names of all the officers of the corporation owning and operating such elevators or warehouse and all moneys received for such licenses shall be turned over to the state grain inspection fund. Such license shall confer upon the licensee full authority to operate such warehouse or elevator in accordance with the laws of this state and the rules and regulations prescribed by said commission, and every person, company or corporation receiving such license shall be held to have accepted the provisions of this act, and thereby to have agreed to comply with the same.

If any elevator or warehouse is operated in violation or in disregard of the laws of this state its license shall, upon due proof of this fact, after proper hearing and notice to the licensee, be revoked by the said railroad and warehouse commission. Every such license shall expire on the thirty-first (31st) day of August of each year.

*Sec. 2. Penalty for operating without a license.* No person, firm or corporation shall in any manner operate such public country elevator or country warehouse without having a license as specified in the preceding section, and any attempt to operate such elevator or warehouse without such license shall be deemed a misdemeanor to be punished as hereinafter provided, and any attempt to operate such elevator or warehouse in violation of law and without having the license herein prescribed, may upon complaint of the party aggrieved, and upon complaint of the railroad and warehouse commission, be enjoined and restrained by the district court for the county in which the elevator or warehouse in question is situate, by temporary and permanent

injunction, conformably to the procedure in civil actions in the district court.

Sec. 3. *Rules and regulations.* The railroad and warehouse commission shall before the first (1st) of September of each year, and as much oftener as they shall deem proper, make and promulgate all suitable and necessary rules and regulations for the government and control of public country elevators and public country warehouses, and the receipt, storage, handling and shipment of grain therein and therefrom, and the rates of charges therefor, and the rates so fixed shall be deemed *prima facie* responsible and proper, and such rules and regulations shall be binding and have the force and effect of law; and a printed copy of such rules and regulations shall at all times be posted in a conspicuous place in each of said elevators and warehouses, for the free inspection of the public.

Sec. 4. *Accounts of business done by elevators to be kept—Duties in the running of an elevator—Warehouseman's liability for default in delivery—Limit of charges—Receipts, how numbered and issued.* The party operating such country elevator or country warehouse shall keep a true and correct account in writing, in proper books, of all grain received, stored and shipped at such elevator or warehouse, stating the weight, grade and dockage for dirt or other cause on each lot of grain received in store for sale, storage or shipment, and shall, upon the request of any person delivering grain for storage or shipment, receive the same without discrimination during reasonable and proper business hours, and shall, upon request, deliver to such person or his principal, a warehouse receipt or receipts therefor in favor of such person or his order, dated the day the grain was received, and specifying upon its face the gross and net weight of such grain, the dockage for dirt or other cause, and the grade of such grain, conformable to the grade fixed by the state railroad and warehouse commission and in force at terminal points; and shall also state upon its face that the grain mentioned in such receipt or receipts has been received into store to be stored with grain of the same grade under such inspection, and that, upon the return of said receipt or receipts, and upon the payment or tender of payment of all lawful charges for receiving, storing,

delivering or otherwise handling said grain, which charges may have accrued up to the time of the return of said receipt or receipts, such grain is deliverable to the person named therein, or his order, either from the elevator or warehouse where it was received for storage; or if the owner so desires, in quantities not less than a carload on track on the same line of railway at any terminal point in this state which the owner may designate, where state inspection and weighing is in force, such grain to be subject to such official inspection and weight as may be determined upon its arrival or delivery at such terminal point and the party delivering shall be liable for the delivery of the kind, grade and net quantity called for by such certificate, less an allowance not to exceed sixty (60) pounds per carload for shrinkage or loss in transit, if such shrinkage or loss occurs. On the return or presentation of such receipts by the lawful holder thereof, properly indorsed, at the elevator or warehouse where the grain represented therein is made deliverable and upon the payment or tender of payment of all lawful charges, as hereinbefore provided, the grain shall be immediately delivered to the holder of such receipt, and it shall not be subject to any further charges for storage after demand for such delivery shall have been made, and cars are furnished by the railway company which the party operating the elevator or warehouse shall have called for promptly upon the request for shipment made by the holder of such receipt in the order of the date upon which such receipts are surrendered for shipment. The grain represented by such receipt shall be delivered within twenty-four (24) hours after such demand shall have been made and cars or vessels or other means of receiving the same from the elevator or warehouse shall have been furnished.

If not delivered upon such demand within twenty-four (24) hours after such car, vessel or other means for receiving the same shall have been furnished, the warehouse in default shall be liable to the owner of such receipt for damages for such default, in the sum of one (1) cent per bushel and in addition thereto, one (1) cent per bushel for each and every day of such neglect or refusal to deliver; *Provided*, No warehouseman shall be held to be in default in delivering if the property is delivered

in the order demanded by holders of different receipts or terminal orders and as rapidly as due diligence, care and prudence will justify.

**Above section construed :**

*Held* to be penal in character and that a strict compliance therewith was necessary to set the statute in motion. A demand upon the agent's son at the usual place of business of the agent *held* not a proper demand. *Ferch v. Victoria Elevator Co.*, 79 Minn. 416.

On the return of said receipts, if shipment or delivery of the grain at terminal point is requested by the owner thereof, the party receiving such grain shall deliver to said owner a certificate in evidence of his right to such shipment or delivery, stating upon its face the date and place of its issue, the name of the consignor and consignee and place of destination and shall also specify upon the face of such certificate the kind of grain and the grade and net quantity exclusive of dockage, to which said owner is entitled by his original warehouse receipts and by official inspection and weighing at such designated terminal point.

The grain represented by such certificate shall be subject only to such freight or transportation or other lawful charges which would accrue upon said grain from the date of the issue of said certificate to the date of actual delivery, within the meaning of this act, at such terminal point.

All warehouse receipts issued for grain received and all certificates shall be consecutively numbered, and no two receipts or certificates bearing the same number shall be issued during the same year from the same warehouse, except when the same is lost or destroyed, in which case the new receipt or certificate shall bear the same date and number as the original and shall be plainly marked on its face "Duplicate." Warehouse receipts or certificates shall not be issued except upon grain which has actually been delivered in said country warehouse. Warehouse receipts shall not be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been re-

ceived. No receipt or certificate shall contain language in any-wise limiting or modifying the liability of the party issuing the same as imposed by the laws of this state, and any such language, if inserted, shall be null and void.

A failure to specify in such warehouse receipts or certificates the true and correct grade and net weight, exclusive of dockage, of any lot of grain to which the owner of such grain may be entitled shall be deemed a misdemeanor on the part of the person issuing the same for which, on conviction, he may be punished as hereinafter provided.

*Sec. 5. When grain to be submitted to grain inspector for grading or dockage.* In case there is a disagreement between the person in the immediate charge of and receiving the grain at such country elevator or warehouse, and the person delivering the grain to such elevator or warehouse for storage or shipment, at the time of such delivery, as to the proper grade or proper dockage for dirt or otherwise, on any lot of grain delivered, an average sample of at least three (3) quarts of the grain in dispute may be taken by one or both parties and forwarded in a suitable sack, properly tied and sealed, express charges prepaid, to the chief inspector of grain at St. Paul, which shall be accompanied by the request in writing, of either or both of the parties aforesaid, that the said chief inspector shall examine the same and report what grade or dockage or both the said grain is, in his opinion, entitled to and would receive, if shipped to the terminal points and subjected to official inspection.

It shall be the duty of said chief inspector, as soon as practicable, to examine and inspect such sample of grain and adjudge the proper grade or dockage or both, to which said sample is, in his judgment, entitled and which grain of like quality and character would receive if shipped to the terminal points and subjected to official inspection.

As soon as said chief inspector has examined, inspected and adjudged the grade and dockage, as aforesaid, he shall at once make out in writing and in triplicate a statement of his judgment and finding in respect to the case under consideration, and shall transmit by mail to each of the parties to said disagreement, a copy of the said statement of his judgment and finding,

preserving the original together with the sample on file in his office.

The judgment and finding of the said chief inspector shall be deemed conclusive as to the grade or dockage, or both, of said sample, submitted for his consideration, as herein provided, as well as conclusive evidence of the grade or dockage, or both, that gram of the same quality and character would receive if shipped to the terminal points and subjected to official inspection.

*Sec. 6. Complaints of unfairness and discrimination—How dealt with.* Whenever complaint is made, in writing, to the railroad and warehouse commission, by any person aggrieved, that the party operating any country elevator or country warehouse under this act fails to give just and fair weights and grades, or is guilty of making unreasonable dockage for dirt or other cause, or fails in any manner to operate such elevator or warehouse fairly, justly and properly, or is guilty of any discrimination then it shall be the duty of the railroad and warehouse commission to inquire into and investigate said complaint and the charge therein contained, and to this end and for this purpose the commission shall have full authority to inspect and examine all the books, records and papers pertaining to the business of such elevator or warehouse and all the scales, machinery and fixtures and appliances used therein.

In case the said commission find the complaint and charge therein contained, or any part thereof true, they shall adjudge the same in writing and shall at once serve a copy of such decision, with a notice to desist and abstain from the error and malpractice found, upon the party offending and against whom the complaint was made, and to afford prompt redress to the party injured, and if such party does not desist and abstain and does not give the proper redress and relief to the party injured, it shall be the duty of the said commission to make a special report of the facts found and ascertained upon the investigation of said complaint and the charge therein contained, which report shall also include a copy of the decision by said commission made therein to the attorney of the county where such elevator or warehouse is located who shall institute and carry

on in the name of the complainant such actions, civil or otherwise, as may be necessary and appropriate to redress the wrongs complained of and to prevent their recurrence in the future.

*Sec. 7. Reports to railroad and warehouse commission—Inspection of warehouses.* Any person, firm or corporation operating any country warehouse or country elevator under this act, shall at any and all times when requested by the railroad and warehouse commission, render and furnish in writing, under oath, to the said commission a report and itemized statement of all grain received and stored in or delivered or shipped from such elevator or warehouse during the year then last passed; such statement shall specify the kind, grade, gross and net weight of all grain received or stored and all grain delivered or shipped, and shall particularly specify and account for all so-called overages that may have occurred during the year. Such statement and report shall be made upon blanks and forms furnished and prescribed by the railroad and warehouse commission.

The commission shall cause every warehouse and the business thereof, and the mode of conducting the same, to be inspected at such times as the commission may order, by one or more members of the commission or by some member of the grain inspection department, especially assigned for that purpose, who shall report in writing to the commission the result of such examination; and the property, books, records, accounts, papers and proceedings, so far as they relate to their condition, operation or management, shall, at all times during business hours, be subject to the examination and inspection of such commission.

*Sec. 8. Pooling not lawful.* It shall be unlawful for any person, firm or corporation who shall operate any country grain elevator or country warehouse, under this act, to enter into any contract, agreement, understanding or combination with any other person, firm or corporation, who shall operate any other country grain elevator or country grain warehouse under this act, for pooling of the earnings of business of other different and competing grain elevators or warehouses so as to divide between them the aggregate or net proceeds of the earnings or business of such grain elevators or warehouses, or any portion thereof; and in case of any agreement for the pooling of the earnings or

business aforesaid, each day of its continuance shall be deemed a separate offense.

Sec. 9. *Penalty for violating any of these provisions.* Any person, firm or corporation who is guilty of any of the misdemeanors specified in this act, or who is guilty of violating any of the provisions of this act, shall, on conviction, be punished by a fine of not less than fifty (50) dollars and not more than five hundred (500) dollars and in case a natural person is so convicted, he may be imprisoned until the fine is paid or until discharged by due course of law; and in case a corporation is so convicted, the fine may be collected by execution, as judgments are collected in civil actions, or the property of the corporation may be sequestered and charged with the same in appropriate legal proceedings.

Sec. 10. All laws and parts of laws inconsistent with this act are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after the date of its passage.

Approved April 16, 1893.

#### CHAPTER 65, GENERAL LAWS, 1893.

An Act to provide for the construction of side tracks and switches upon the right of way of railroad companies, to elevators, warehouses, mills or manufactories located on lands adjacent to the right of way of any railroad company in this state.

Be it enacted by the legislature of the state of Minnesota:

Section 1. *Demand for side track and switch.* The owner or owners of any elevator, warehouse or mill of not less than five thousand bushels capacity, located on lands adjacent to the right of way of any railroad company in this state, at or in the immediate vicinity of any regular way station of any railroad, shall have the right to demand of such railroad company the construction of a side track over its right of way from such elevator, warehouse, mill or manufactory, which said side track shall connect with a switch with the main or other side track of such railroad, at a point within a reasonable distance from such way station, and the railroad company shall build said

side track and make such connection at its own expense. And in case no suitable place for the erection of such elevator, warehouse and mill can be had, for any cause, within the distance occupied by the switches, then the railroad and warehouse commission shall have the right upon application of either party in interest, to designate a place for the erection of the same, not more than one quarter of a mile beyond the end of such switch; provided, however, that no such owner or owners shall have the right to demand, nor shall any such railroad company be required to construct any side track under the provisions of this act which shall connect with the main track of such railroad outside of the outside switches of the yard of such station or siding as the same may be established at the date of such demand.

*Sec. 2. To be kept in repair by railroad company—Agreement as to compensation.* Such side track and switch shall at all times be under the control and management of, and be kept in repair and be operated by the railroad company constructing or owning the same, and used for the business of such elevator, warehouse, mill or manufactory, for whose use the same may have been constructed, upon such terms and conditions as may be agreed upon by the owner or owners of such elevator, warehouse, mill or manufactory and the railway company building such side track and switch, or in case of failure to make such agreement upon such terms and conditions as are imposed by the railroad and warehouse commission, as provided in section three of this act.

*Sec. 3. Failure to agree upon location.* In case the owner or owners of such elevator, warehouse, mill or manufactory and the railroad company of which the demand is made cannot agree upon the location of such side track and switch, or upon the terms and conditions upon which the same shall be constructed, maintained and operated, either party may apply to the railroad and warehouse commission of this state, which is hereby authorized and required, after hearing the parties, to fix the location and the terms and conditions upon which such railroad company shall be compelled to locate, build, maintain and operate such side track and switch, and the decision of the

railroad and warehouse commission in relation thereto shall be accepted and received as an administrative order, made pursuant to section ten of chapter ten of the General Laws of Minnesota of 1887, and shall be enforced as all other administrative orders as are in said act provided.

Sec. 4. This act shall take effect and be in force from and after its passage.

Approved March 15, 1893.

#### CHAPTER 64, GENERAL LAWS, 1893.

An Act providing for the erection of public grain warehouses and grain elevators, on or near the right of way of railways, and providing for condemnation proceedings in connection therewith.

Be it enacted by the legislature of the state of Minnesota:

Section 1. *Application for permission to build.* Any person, firm or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment or storage of grain for the public for hire, may make application in writing containing a description of that portion of the right of way of said railroad on which said person, firm or corporation desires to erect a warehouse or elevator, and the size and capacity of the warehouse or elevator proposed to be erected and the time for which it is desired to maintain said warehouse or elevator to the person, firm or corporation owning, leasing or operating the railway at such station or siding for the right, privilege and easement of erecting and maintaining for the time stated in said application and for reasonable compensation such warehouse or elevator as aforesaid upon the right of way appertaining to such railway at such siding or station, and within and between the outside switches of the yard of such railway station or siding, and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege and easement aforesaid shall absolutely and unconditionally be entitled to the same.

Sec. 2. *Compensation proposed—Notice of acceptance or rejection.* The application provided in the first section of this

act shall also state the amount the applicant deems a reasonable compensation for the right, privilege and easement he desires to acquire, and said applicant shall tender and pay to such person, firm or corporation from whom such easement is sought the sum stated in such application, and in case the amount so named and tendered is not accepted and the parties cannot agree on the amount to be paid for such right, privilege and easement, the same shall be ascertained, assessed and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege and easement sought is situated, which court is hereby given full jurisdiction in the premises and shall at all times be deemed open and in session for the purposes of this act.

It shall be the duty of any person, firm or corporation to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of this act to within ten days after the receipt of said application notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege and easement sought to be acquired, and in case said person, firm or corporation fails to notify the applicant within said ten days, said person, firm or corporation shall be deemed to have accepted said amount, and upon payment or tender thereof said applicant shall be deemed to have acquired the right, privilege and easement applied for.

*See. 3. Proceedings in case of failure to agree.* Proceedings in the district court shall be instituted and carried on as follows: The party seeking the right, privilege and easement aforesaid shall present to and file with the district court a petition in writing, and under oath specifying and describing the right, privilege and easement sought and the time for which the same is sought and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor. A copy of the application for such privilege shall be attached to said petition and thereupon it shall at once be the duty of the court, by its order in writing, to fix upon a place and a time not more than thirty days thereafter where and when the court will try, ascertain, assess and determine the amount of such

compensation, a certified copy of which order, at least twenty days before the time so fixed upon, shall be served upon the party from whom the right, privilege and easement is sought, as summons are served in civil actions of said court, and such service when made shall be ample notice to and summons for the party so served to appear and join in the proceedings and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceedings.

Sec. 4. *Trial by judge or jury—Findings of court or jury—Appeal to supreme court—Costs and disbursements.* At the time and place so fixed for ascertaining, assessing and determining the compensation aforesaid the court shall immediately proceed to try said matter, without a jury, if the parties consent, and if they do not consent and if the time and place fixed for said hearing is at a general or special term of said court where a petit jury has been summoned, the court shall proceed to the hearing of such matter with a jury selected and sworn from the panel present at said term, in the same manner as jurors are selected in civil actions, and if the regular panel is exhausted before a jury is secured talesmen may be summoned. In case said proceedings are made returnable at any other time than at a term where a petit jury shall have been summoned the court shall make an order requiring the selection of twenty-four jurors from those returned by the county commissioners, which jury shall be drawn and selected in the same manner provided by law for the drawing of jurors for general terms of the district court, and from the jurors so returned a jury shall be selected the same as in civil actions and the trial shall proceed after the manner of trials in civil actions and the court or jury, as the case may be, shall find and assess compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege and easement sought, and immediately after the finding or verdict has been made the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found, and in case such election is not made by this party then the other party to the proceedings may make such election, and

after election is made as aforesaid judgment shall be rendered, adjudging, among other things, that upon the payment of the gross sum found, or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid and for the time therein specified; and thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege and easement aforesaid.

In case the annual rental is elected the same shall be paid yearly in advance, and if not so paid after thirty days' default the right, privilege and easement aforesaid shall be absolutely forfeited. Within thirty days after the entry of said judgment as hereinbefore provided, but not later, an appeal may be taken by either party to the supreme court, but such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege and easement asked for by the petition and conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises.

Costs and disbursements as in civil actions shall, in each court, be paid by the unsuccessful party. If the findings of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party ; but if the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party. In the supreme court, if the judgment or order appealed from is reversed or modified, the appellant shall be deemed the successful party; but if the judgment or order appealed from is affirmed, the respondent shall be deemed the successful party.

*Sec. 5. To be public elevators and warehouses.* All elevators and warehouses erected and maintained under the provisions of

this act shall be deemed public elevators and public warehouses and shall be subject to legislative control and shall be kept open for business for the public for reasonable business hours from the fifteenth day of September in each calendar year to the fifteenth day of January in each succeeding calendar year. Any person, firm or corporation who fails to comply with the provisions of this section shall forfeit the rights, privileges and easements acquired under this act.

Sec. 6. *Erection of elevators to commence within sixty days.* Any persons, firms or corporations availing themselves of the provisions of this act shall, within sixty days after the amount to be paid for the easement acquired thereunder is finally determined by agreement or by proceedings in court, commence the erection of the warehouse or elevator stated in the application referred to in section one, and complete the same within ninety days thereafter, and in case of failure to comply with the provisions of this section they shall be deemed to have abandoned the right, privilege and easement acquired, and the part or portion of the railroad right of way described in their application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of this act.

Sec. 7. This act shall take effect and be in force after the first day of May, A. D. 1893.

Approved April 8, 1893.

### CHAPTER 73, LAWS, 1879.

An Act to prevent fraud by coloring grain.

Section 3e. *Grain not to be colored.* No person shall subject, or procure to be subjected, any barley or other grain, to fumigation by sulphur or other material, or to any other chemical process affecting the color of such barley or grain.

Sec. 3f. *Sale of colored grain forbidden.* No person shall sell, or offer for sale, any barley or other grain which shall have been subjected to fumigation or other process mentioned in the last section, knowing the same to have been so subjected.

Sec. 3g. *Penalty.* Any person violating the provisions of this act, shall, upon conviction thereof, be punished by a fine not

exceeding five hundred (500) dollars, or imprisonment, not exceeding one (1) year in the state prison, or both such fine and imprisonment, and shall be liable to treble the damages sustained by any person injured by such violation. (1879, chap. 73, secs. 1, 2, 3.)

## WEIGHTS AND MEASURES.

### GENERAL STATUTES, 1878, CHAPTER 21.

*Section 1. Standard weights and measures.* The standard weights and measures received from the secretary of state of the United States, and all scalebeams, weights and measures owned by this state, shall be deposited in the office of the state treasurer, who shall receive and preserve the same.

*Sec. 2. State treasurer to be sealer of weights, etc.* The state treasurer shall be the sealer of weights and measures for the state. He shall try and prove by said standards all weights and measures, scales or beams sent or brought to him for that purpose by any county sealer, and shall seal such when found to be accurate, by stamping upon the letters "Min." with a seal he shall have and keep for that purpose.

*Sec. 3. Treasurer to be sealer of each county.* The treasurer of each county shall be the sealer of weights and measures for the county. He shall procure, at the expense of the county (if not already provided), a full set of weights and measures, scales and beams, which he shall cause to be tried, proved and sealed by the state standard, and certified by the state treasurer; and the county treasurer for the time being, one in every five (5) years from the first (1st) day of January, A. D. one thousand eight hundred and sixty-five (1865), shall cause the standard in his keeping to be tried, proved and sealed by the state standards under the direction of the state treasurer. Such weights and measures, when so sealed and certified, shall be deposited in the office of the county treasurer as the county standards, by which he shall try and prove all scalebeams, steelyards, weights and measures brought to him for that purpose, and shall seal such, when found to be accurate by stamping upon them the letters "Min." with a seal he shall have and keep for that

purpose. And for each trying and proving, whether sealed or not, he shall receive a fee of five (5) cents for every scalebeam, steelyard, weight or measure.

Sec. 4. *Deputy sealers of weights and measures.* The county treasurer of each organized county shall have power to appoint in writing a deputy sealer of weights and measures for each railroad station and wheat market in his county, each of which appointments shall be recorded in the office of the register of deeds, and thereupon each of said deputies shall have all the powers and shall be competent to perform all the duties of such office, and shall, in case of willful neglect or refusal to faithfully discharge the duties required of him by law, be punished in accordance with the provisions of this act relating to the office of sealer of weights and measures. (As amended 1874, chap. 76, sec. 1.)

Sec. 11. *Weights and measures—Penalty for using not proved and sealed, etc.—Sealer or deputy to examine and test weights and measures when so requested—Fines.* All persons engaged in any business, trade or occupation, requiring the use of weights or measures, shall cause to be tried, proved and sealed by the sealer of weights and measures, in their respective counties, all scalebeams, steelyards, weights, or measures, used by them in buying or selling any goods, wares, merchandise, grain or other commodities. If, after the expiration of three months from the passage of this act, any person shall buy, sell or dispose of any goods, wares, merchandise, grain or other commodities by any scalebeams, steelyard, weight or measure, not proved and sealed in accordance with the provisions of the law to which this is amendatory, or shall fraudulently buy, sell or dispose of any goods or commodities, wares, grain or merchandise, by any scalebeam, steelyard, weight or measure that has been sealed, but is unjust, shall be deemed guilty of a misdemeanor, and, upon conviction thereof by any court having competent jurisdiction, shall be fined not less than five (5), nor more than one hundred (100) dollars; and, upon neglect or refusal to pay such fine and the costs of prosecution, the court before whom the accused shall have been tried, shall commit him to the county jail, until such fine and costs are paid, or he is discharged by

due course of law. And for the purpose of enforcing the law; it shall be the duty of the sealer of weights and measures, or his deputy, upon the written request of any aggrieved person; and upon the payment to him in advance by such person, the sum of one (1) dollar, and the further sum of twenty (20) cents per mile for going and returning, as travelling expenses, to examine and test any weights or measures used within his county, whether the same shall have been before tested, proved and sealed or not, at any time when called upon, and without previous notice to the person or party complained of. And if such sealer of weights and measures, or any deputy sealer of weights and measures, shall, directly or indirectly, give previous notice or information to the party complained of, of such examination, in any manner whatever, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty (50), nor more than one hundred (100) dollars, or by imprisonment in the county jail for not less than thirty (30), nor more than ninety (90) days, or by both fine and imprisonment, in the discretion of the court. All fines collected under the provisions of this act shall be paid over to the county treasurer for the benefit of the school fund of the county where the action is brought. (As amended 1874, chap. 76, sec. 3.)

*Sec. 12. Neglect to procure weights and measures—Penalty.*  
If the treasurer of any county, or the sealer of weights and measures of any township, neglects to procure (if not already provided) a set of weights and measures for such county or township, in compliance with the provisions of this chapter, he shall, upon conviction thereof by any court of competent jurisdiction, forfeit a sum not exceeding one hundred (100) dollars to the use of the county.

*Sec. 13. Action against sealer, how instituted.* No action shall be commenced against any county or township sealer for neglecting to procure the sets of weights and measures as required by law, until the person proposing to bring such action gives such sealer notice in writing of his intention to commence such action, at least twenty (20) days prior thereto. And if such weights and measures are provided in accordance with the re-

quirements of law, within twenty (20) days from such notice, then such action shall not be commenced.

(Only such sections which pertain to measures and weights of grain are included in foregoing chapter.)

### CHAPTER 31, GENERAL LAWS, 1897.

An Act to amend section nine (9) of chapter twenty-one (21) of the General Statutes of eighteen hundred and seventy-eight (1878), as amended by chapter twenty-two (22) of the General Laws of eighteen hundred and eighty-seven (1887) and by chapter one hundred and nine (109) of the General Laws of eighteen hundred and ninety-three (1893), relating to weights and measures.

Be it enacted by the legislature of the state of Minnesota :

Section 1. That section nine (9) of chapter twenty-one (21) of the General Statutes of one thousand eight hundred and seventy-eight (1878), as amended by chapter twenty-two (22) of the General Laws of one thousand eight hundred and eighty-seven (1887) and by chapter one hundred and nine (109) of the General Laws of one thousand eight hundred and ninety-three (1893) be and the same is hereby amended so as to read as follows:

*"Sec. 9. Weights to apply on various commodities—Penalty.*  
Whenever any of the following articles shall be contracted for or sold or delivered, and no special contract or agreement shall be made to the contrary, the weight avoirdupois per bushel shall be as follows, to-wit: Apples, green, fifty (50) pounds; apples, dried, twenty-eight (28) pounds; beans, sixty (60) pounds; barley, forty-eight (48) pounds; buckwheat, fifty (50) pounds; beets, fifty (50) pounds; blue grass seed, fourteen (14) pounds; blueberries, forty-two (42) pounds; broom corn seed, fifty-seven (57) pounds; corn, shelled, fifty-six (56) pounds; corn, in ear, seventy (70) pounds; clover seed, sixty (60) pounds; carrots, forty-five (45) pounds; charcoal, twenty (20) pounds; cranberries, thirty-six (36) pounds; currants, forty (40) pounds; gooseberries, forty (40) pounds; hemp seed, fifty (50) pounds; Hungarian grass seed, forty-eight (48) pounds; millet, forty-

eight (48) pounds; oats, thirty-two (32) pounds; onions, fifty-two (52) pounds; orchard grass seed, fourteen (14) pounds; peas, sixty (60) pounds; Irish potatoes, sixty (60) pounds; sweet potatoes, fifty-five (55) pounds; parsnips, forty-two (42) pounds; peaches, dried, twenty-eight (28) pounds; plastering hair, washed, four (4) pounds; plastering hair, unwashed, eight (8) pounds; rape seed, fifty (50) pounds; red top seed, fourteen (14) pounds; rutabagas, fifty-two (52) pounds; rye, fifty-six (56) pounds; sorghum seed, fifty-seven (57) pounds; timothy seed, forty-five (45) pounds; wheat, sixty (60) pounds; coal, eighty (80) pounds; provided, that if coal be sold by the ton the weight thereof shall be two thousand (2,000) pounds.

Whenever any wood shall be contracted for or sold or delivered, and no special contract or agreement shall be made to the contrary, the measurement per cord shall be one hundred and twenty-eight (128) cubic feet. And whoever in buying any of said articles shall take any greater number of pounds or cubic feet thereof to the bushel, ton or cord, as the case may be, or in selling any of said articles shall give any less number of pounds or cubic feet thereof to the bushel, ton or cord, as the case may be, than is herein allowed and specified, except when expressly authorized so to do by special contract or agreement to that effect, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than ten (10) dollars, nor more than one hundred (100) dollars, or by imprisonment in the county jail for not more than ninety (90) days.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved March 5, 1897.

#### CHAPTER 199, GENERAL LAWS, 1899.

An Act establishing a board of appeals for the inspection of grain, and prescribing its duties.

Be it enacted by the legislature of the state of Minnesota:

Section. 1. The governor shall appoint six (6) suitable, competent persons, on or before July fifteenth (15th), eighteen hundred and ninety-nine (1899), after the passage of this act,

three (3) of whom shall constitute a board of appeals for the inspection of grain at Minneapolis, and the other three (3) to constitute a similar board at Duluth, each respective board to consist, so far as may be, of one (1) practical or representative producer of grain, one (1) practical or representative grain commission merchant, and one (1) practical or representative grain merchant, exporter or miller; not more than two (2) members of either of said boards of appeals shall belong to the same political party, whose terms of office shall commence Augus' first (1st), eighteen hundred and ninety-nine (1899), and who shall hold their office for a period of two (2) years, and until their successors are appointed and qualified.

Every two (2) years thereafter, and within thirty (30) days prior to the expiration of their terms of office, the governor shall appoint six (6) such suitable, competent persons, to succeed those whose terms will expire on August first (1st), who shall hold their office for two (2) years, and until their successors are appointed and qualified.

Any vacancy which shall occur in the office of any member of said respective boards of appeals shall be filled by the governor for the remainder of the term, when a successor shall be appointed for the full term of two (2) years.

The governor shall have power, in his discretion, to remove from office any member of said respective boards of appeals at any time, and fill vacancies thus created by the appointment of any suitable person or persons.

Sec. 2. In all matters involving doubt on the part of any grain inspector as to the proper grade of any lot of grain under the standard or rules of inspection, or in case any owner, consignee or shipper of grain, or any warehouse manager shall be dissatisfied with the decision of the chief inspector or any of his chief deputy inspectors, or other inspectors, an appeal may be made to the said board of appeals, in the district where the inspection was first made, and a decision of a majority of the said board of appeals shall be final. The railway and warehouse commissioners are authorized to make all necessary rules governing such appeals and to fix the fees for the same. All notices requiring the services of the board of appeals shall be

filed in the office of the chief deputy inspector, in whose district the grievance or dispute arises, who shall in turn deliver the same promptly to said board.

*Provided, however,* that the party appealing shall pay to the chief deputy inspector, with whom he serves notice of appeal, a sum not to exceed one (1) dollar per case before said appeal be entertained, which sum shall be refunded should such appeal be sustained.

Sec. 3. The entire six (6) members constituting the two (2) boards of appeals shall meet together, or a majority of said six (6) members, not later than September fifteenth (15th) each year, and prescribe or designate standards for grades, and when grades are so prescribed, designated and published, the same shall not be changed during the crop year, or from one annual meeting until the next, except on approval of at least five (5) members of the two (2) joint boards.

Sec. 4. It shall be the duty of either branch of the board of appeals, when of the unanimous opinion that any inspector is incompetent, indifferent, intemperate or untrustworthy, to report such fact to the railway and warehouse commission.

Sec. 5. Either branch of the board of appeals shall hear, and it is hereby made the duty of either branch to whom an appeal shall be made, to hear and determine all questions at issue as to grades of grain, made by any inspector, or made against any public country warehouse. All such appeals shall be made to either branch of the board of appeals, hereby created in section one (1) of this act.

Sec. 6. Each of the members of the said board of appeals shall, before entering upon the duties of their office, take an oath of office as in the case of other state officers, and shall execute a bond in the penal sum of five thousand (5,000) dollars, to the state of Minnesota, with good and sufficient sureties, to be approved by the governor, conditioned that they will faithfully and impartially discharge the duties of their office, according to law, such bonds to be filed with the secretary of state.

The sureties required by this section shall not be interested in, nor connected with any elevator, or grain commission business, firm or corporation, and surety bonds may be received

from any surety company, approved by the governor, which is authorized to do business in this state.

No member of such board of appeals shall be a member of any board of trade or other grain exchange or grain firm, nor shall he in any way be engaged in, or interested in the business of buying or selling grain.

Sec. 7. The salaries of the members of the said boards of appeals shall be fixed by the railway and warehouse commissioners by consent of the governor, and shall be paid from the grain inspection fund, and all necessary expenses incurred in carrying out the provisions of this act shall be paid out of the said grain inspection fund, upon the order of the railway and warehouse commissioners.

Sec. 8. All acts or parts of acts inconsistent herewith are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its passage.

Approved April 13, 1899.

#### CHAPTER 157, GENERAL LAWS, 1901.

An Act to establish state inspection and weighing of grain at country points, and making such country points terminal points as far as relates to such service, and making the provisions of chapter 144, General Laws of 1885, being "An act to regulate warehouses, inspection, weighing and handling of grain, applicable to such country terminal points."

Be it enacted by the legislature of the state of Minnesota:

Section 1. That upon proper application to the railroad and warehouse commissioners of the state of Minnesota by the owner or manager of an elevator, warehouse or mill, located outside of St. Paul, Minneapolis and Duluth, in this state, for terminal inspection and weighing service, the said commissioners are hereby authorized, if in their judgment it is expedient and feasible, to furnish such service. *Provided*, that such owner or manager shall first enter into an agreement with said commissioners to pay all costs of such service at such local point. The said commissioners shall also, if in their judgment it is con-

sidered desirable, make and promulgate special rules and regulations covering such service at country terminal points.

Sec. 2. All laws of this state applying, governing and regulating, weighing and inspection of grain at St. Paul, Minneapolis, Duluth and St. Cloud shall apply, regulate and govern the weighing and inspection of grain at all points which may hereafter be established as terminal points by the railroad and warehouse commissioners.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved April 6, 1901.

#### CHAPTER 334, GENERAL LAWS, 1901.

An Act to establish state weighing and inspection of grain at the city of Willmar, in the county of Kandiyohi, and making said city of Willmar a terminal point, and making all laws of this state that are applicable to the weighing and inspection of grain at the terminal points of St. Paul, Minneapolis, Duluth, St. Cloud, Fergus Falls and Winona applicable to Willmar.

Be it enacted by the legislature of the state of Minnesota :

Section 1. The city of Willmar, in the county of Kandiyohi, is hereby made and established as a terminal point for the weighing and inspection of grain.

Sec. 2. All laws of this state applying, governing and regulating the weighing and inspection of grain at St. Paul, Minneapolis, Duluth and St. Cloud shall apply, regulate and govern the weighing and inspection of grain at the city of Willmar.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved April 13, 1901.

#### CHAPTER 132, GENERAL LAWS, 1901.

An Act to establish state weighing and inspection of grain at the city of New Prague, in the counties of Scott and Le Sueur, and making said city of New Prague a terminal point, and making all laws of this state that are applicable to the weigh-

ing and inspection of grain at the terminal points of St. Paul, Minneapolis, Duluth, St. Cloud, Little Falls, Fergus Falls and Winona applicable to New Prague.

Be it enacted by the legislature of the state of Minnesota:

Section 1. The city of New Prague, in the counties of Scott and Le Sueur, is hereby made and established as a terminal point for the weighing and inspection of grain.

Sec. 2. All laws of this state applying, governing and regulating the weighing and inspection of grain at St. Paul, Minneapolis, Duluth, St. Cloud, Little Falls, Fergus Falls and Winona shall apply, regulate and govern the weighing and inspection of grain at the city of New Prague.

Sec. 3. This act shall be in force from and after its passage.

Approved April 4, 1901.

#### CHAPTER 107, GENERAL LAWS, 1901.

An Act to amend subsection "second" of subsection 3 of section fifteen (15) of chapter one hundred and forty-five (145) of the General Laws of the year 1895, relating to banks of discount and deposit.

Be it enacted by the legislature of the state of Minnesota:

Section 1. That subsection "second" of subsection 3 of section fifteen (15) of chapter one hundred and forty-five (145) of the General Laws of the year 1895, relating to banks of discount and deposit, be and the same is hereby amended so as to read as follows:

"Second. That the full amount of the loans shall at all times be covered by policies of fire insurance issued by companies admitted to do business in this state, to the extent of their ability to cover such loans, and then by companies having sufficient paid-up capital to be so admitted, and all such policies shall be made payable in case of loss to the bank or holder of the warehouse receipts, except that in all cases where the products covered by warehouse receipts are stored in a warehouse or warehouses pronounced by the railway and warehouse commissioners to be fireproof, their certificate to that effect to be

accepted in lieu of the policy of fire insurance provided for in this clause."

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved April 2, 1901.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment and sale.*

Where a party delivers or deposits grain with another, with an agreement, express or implied, that the latter may use and dispose of it, and fulfill his obligations to the former by returning an equal amount of other grain of the same quality, the transaction, in the absence of a statute changing the rule, is a sale and not a bailment. *Fishback v. Van Dusen & Co.*, 33 Minn. 110. (Note. The party receiving the wheat for storage was not a "warehouseman." See *Nat. Ex. Bank of H. v. Wilder*, 34 Minn. 149, modifying certain dicta in above case and distinguishing the same.) See also *Weiland v. Krejnick*, 63 Minn. 314; *Weiland v. Sunwall*, 63 Minn. 320.

*Same—Right to sell at any time—Sale.*

In an action against a warehouseman to recover the value of wheat deposited with him, the evidence showed that it was the invariable custom at the warehouses in the city to mingle together all the grain of the same grade, and that this was done with the knowledge of the depositors, and that, if a depositor should demand the wheat, instead of the value, he would not receive, unless by accident, any of the identical wheat deposited by him. The evidence further showed that it was unusual for the depositor to demand a return of the wheat, as he almost always choose to take the value thereof at the date on which he surrendered the receipt and closed the transaction. *Held* that such a contract constituted a sale and not a bailment. *Rahilly v. Wilson*, 3 Dillon, 420.

*Same—Option to buy.*

A receipt for grain placed in store, which in all other respects constituted a bailment, contained the following: "The conditions on which this wheat is received at this elevator are that Rieger (the warehouseman) has this option: either to deliver the grade of wheat that this ticket calls for, or to pay the bearer the market price for the same, less elevator charges, on sur-

render of this ticket." *Held* that this did not render the contract one of sale. It merely gave the warehouseman an option to buy when the receipt was presented. This option he could only exercise when the receipt was presented, and by paying the money. *State of Minnesota v. Rilger*, 59 Minn. 151; *State v. Cowdery*, 79 Minn. 94.

### B.

*Ordinary care—Evidence of custom not conclusive as to such care having been exercised.*

The following *held* to be correct instruction given by the court, to the jury, in defining the degree of care to be exercised by a warehouseman: "That by ordinary care is meant that care which a person of common prudence takes of his own concerns, or that degree of care which men of common prudence exercise about their own affairs in the age and country in which they live; that in determining what would be ordinary care in this particular case, reference must be had as to the actual state of society, the business habits, and general usage peculiar to the time and country. That what is done by men of ordinary prudence in any particular country in respect to things of a like nature, whether it be more or less, in point of diligence, than what is exacted in another country, becomes in fact the general measure of diligence. But the evidence of customs of railroads given in this case is merely evidence to go to the jury for what it is worth. It is not conclusive." *Derosia v. The Winona & St. Peter R. R. Co.*, 18 Minn. 133.

*Rights of depositors—Title to goods—Commingling grain.*

A deposit of grain for storage is a bailment, the title remaining in the depositor, so that he is deemed to be the owner of the grain in the warehouse to the amount of his deposit, although the identical grain he deposited has been removed, and other grain, of like kind and quality, substituted in its stead. *Hall v. Pillsbury et al.*, 43 Minn. 33.

*Demand on agent in charge of warehouse, proper.*

An agent lawfully in charge of the business of a warehouse in which goods, the title to which is in dispute, are deposited in the proper party upon whom to make demand for the de-

livery thereof, by the person claiming title thereto. *Lundberg v. Northwestern Elevator Co.*, 42 Minn. 37.

*Conversion—Sale by warehouseman—Owners may follow goods.*

If a warehouseman sell as his own, out of a common mass of grain in his warehouse, any in excess of that which he personally has stored there, it is a conversion, his sale passes no title and the owners, the depositors, may follow the grain into the hands of the purchaser and recover of him. *Hall v. Pillsbury et al.*, 43 Minn. 33.

*Same—Same—Fraudulent sale by warehouseman—Equity.*

A warehouseman received wheat, for storage, from different depositors, and mingled the same in a common mass, issuing receipts for the same to the various owners. The warehouseman, after having fraudulently sold a large quantity of the wheat, absconded. The creditors thereupon attached all the wheat remaining in the warehouse. In an action of replevin, brought by one holding a majority of the receipts, against the sheriff, in which he claimed that he was entitled to all of the property remaining in the warehouse, the court held that he was not so entitled; that no one of such receipt holders could recover, at law, the whole amount, nor could any number of such holders, less than all of them, recover the whole amount stored. The court further held that it was a case to be brought in equity. *Hammergen v. Schuermier et al.*, 1 McCrary, 434; *Greenleaf et al. v. Dows & Co.*, 8 Fed. Rep. 550.

*Same—Wrongful shipment by warehouseman of grain stored—Demand by receipt holder.*

A demand by the holder of a warehouse receipt for grain deposited for storage, for the amount represented by the receipt, is good notwithstanding that, by reason of removal of grain by the warehouseman, there is not enough left in store to answer all the receipts. *Lentholt et al. v. Fairchild et al.*, 35 Minn. 99.

*Same—Same—Liability of agent, knowingly aiding in the wrong.*  
The agent of a warehouseman, who assists him in wrongfully

disposing of the wheat, knowing that he is doing it wrongfully, is liable to the owners of the wheat. *Id.*

*Contract of storage—Evidence—Correspondence.*

The complaint herein alleged that the plaintiff sold and delivered, at French, Minn., to the defendant, a quantity of wheat, for which it agreed to pay, at any future time when demanded, the then market price of wheat at Duluth or Minneapolis, less thirteen cents per bushel. *Held* that certain correspondence between the parties did not establish such contract. *Wemple v. Northern Dakota Elevator Co.*, 67 Minn. 87.

II.

*Tender of storage charges—Waiver.*

It is competent for a bailee of grain held in store to waive the formal requisites of a tender of charges and grain receipts provided for by Gen. St. 1878, ch. 124, sec. 15. *Wallace v. Minneapolis & Northern Elevator Co.*, 37 Minn. 464; *Tarbell v. Farmers' Mutual Elevator Co.*, 44 Minn. 471.

*Ground of refusal—Estoppel.*

Where a bailee places his refusal to deliver stored grain solely on the ground that it is claimed by a third party, he will not be permitted subsequently to change his position, and justify such refusal on the ground that his charges are not paid. *Wallace v. Minneapolis & Northern Elevator Co.*, 37 Minn. 464.

*Excessive sale for storage charges—Conversion—Burden of proof.*

A large number of articles were deposited by plaintiff with defendant for storage, the charge for storage to be two dollars per month. After the storage for the first month had been due for more than three months, the defendant advertised and sold article by article, all the goods, under the provisions of laws, 1889, ch. 1999. Enough was realized to more than pay the charges overdue for three months and expenses of the sale. The action being for conversion, *held* that the right to sell ceased as soon as the sale had produced enough to satisfy the charges overdue three months and expenses of sale, and all

articles sold after that were illegally sold; and it was for defendant to show what articles were sold before the right to sell ceased, and, there being no evidence on this point, plaintiff was entitled to recover the value of all the articles. *Jesurun v. Kent*, 45 Minn. 222.

*Warehouseman's lien for his charges and for freight, distinguished.*

The lien of a warehouseman upon goods for warehouse charges, and the lien of a warehouseman upon goods for money advanced for freight charges, depend upon different principles of law. A warehouseman who receives goods from a steamboat in the carrying trade, and pays to such boat the freight charges, does not by reason of such payment obtain a lien upon the goods. *Bass & Co. v. Upton*, 1 Minn. 408.

## I.

*Grain in mass—Receipt holders tenants in common—When warehouseman tenant in common.*

Where the grain of several depositors is deposited in a common mass, the receipt holders are tenants in common of the mass, the interest of each being limited to the amount called for by his receipt. The warehouseman too may be a tenant in common; if he has grain in the mass his interest is limited to the excess above what is necessary to meet his outstanding receipts. *Hall v. Pillsbury*, 43 Minn. 33; *Nat. Ex. Bank of H. v. Wilder*, 34 Minn. 149.

## M.

*Pledge—Constructive possession—Warehouse receipt.*

While possession by the pledgee is necessary to the existence and continuance of a pledge, yet this need not be actual physical possession. The delivery of a recognized symbol of title, such as a warehouse receipt, which puts the pledgee in control and constructive possession of the property, is sufficient. *Nat. Ex. Bank of H. v. Wilder*, 34 Minn. 149.

*Same—Commingled wheat.*

Where the pledged property is part of a larger uniform mass, as wheat in an elevator, separation from such uniform mass is

not necessary to constitute an appropriation of the property to the contract of pledge. The pledgee becomes tenant in common with the other owners. *Id.*

*Same—Substitution of other grain by warehouseman (pledgor).*

Where a warehouseman has pledged the warehouse receipts for his own wheat stored in his own warehouse, which wheat is commingled with that of his customers, and in the course of his business ships out the specific grain pledged and purchases and stores in his warehouse other grain of the same kind and quality, the latter, by virtue of the provisions of the statute (ch. 86, Laws of 1876), takes the place of the former, and is appropriated to the contract as the property of the pledgee or depositor. *Id.*

#### N.

*Loss by fire—Nondelivery due to warehouseman's negligence—Liability.*

If, by the negligence of a warehouseman, the owner of goods stored with him is unable to obtain possession thereof, and, as a consequence, the goods remain with the warehouseman and are afterwards burned, although without the fault of the warehouseman, it was *held* that this was a direct consequence of the warehouseman's default, and he is liable therefor. *Derosia v. The Winona & St. Peter R. R. Co.*, 18 Minn. 133.

*Negligence of warehousemen—Decay of apples in cold storage—Jury.*

Where plaintiff stored apples in the cold storage warehouse of defendant and there was sufficient evidence of negligence on the part of defendant to justify the verdict in favor of plaintiff; it was *held* such verdict will not be set aside on appeal, and further, that the question of negligence was properly one for the jury. *Townsend v. Rich*, 58 Minn. 559.

*Same—Rendering them insurers.*

Defendants, warehousemen, received from the plaintiff, for storage, certain goods, she was to bear the risk from fire, and so had the goods insured in the warehouse. In contemplation of their removing the goods, at some indefinite time, to another warehouse, they agreed to give her notice when the

goods were removed, so that she might have the insurance continued on them in such warehouse. Defendants removed the goods but failed to give notice to the plaintiff. By the removal the insurance became void. The goods were destroyed by fire. Defendants had no authority from plaintiff to make any arrangements for insurance. Defendants testified, but it was denied by the agent of the insurance company, that they informed such agent of the removal of the goods and that he promised to make the necessary change in the policy. *Held* that, conceding plaintiff, when informed of this after the fire, might have adopted or ratified what defendants testified to, as an agreement by the insurer to continue the policy, she was not bound to do so, and that though found by the jury to be as defendants testified, it was no defense to an action for neglecting to give notice of the removal. *Conover v. Wood*, 48 Minn. 438; *Brigham v. Wood*, 48 Minn. 344.

*Negligence in storage of cheese—Dripping brine pipes—Terms of receipt.*

The defendant, a warehouse company, received from plaintiff a large amount of cheese for storage in its warehouse and issued to plaintiff a receipt, the conditions of which were as follows: "All property is to be at owner's risk of any loss or damage from riot, fire, water, deterioration, defective cooperage, packing, ratage, vermin, leakage, frost, or from being perishable or otherwise inherently defective when stored." The overhead brine pipes used by defendant in keeping a low temperature in its storage room were covered with ice, and the defendant negligently allowed the temperature in said room to rise so that the ice melted, and the water therefrom dripped down upon and greatly damaged plaintiff's cheese. *Held* that defendant was not exempt from liability for damage caused by its own negligence. *Minn. Butter & Cheese Co. v. St. Paul Cold Storage Warehouse Co.*, 75 Minn. 445.

**O.**

*Measure of damages—When conversion willful and when not—Rule stated.*

Where the conversion of personal property is accidental and

under the belief that the person has a right to the property, and he acts with no wrongful purpose or intent, the measure of damages is the value of the property at the time of the actual taking and conversion. But where the original taking and conversion is willful and without color or claim of right, the measure of damages is the value of the property at the time and in the condition in which it is, when demand for its return is made. *Dolliff v. Robbins*, 83 Minn. 498.

**Q.**

*Warehouse receipts—Expressed conditions as to payments to be made—Notice to purchaser.*

In certain warehouse receipts, issued to a third party and purchased by the plaintiff, there appeared a clause whereby the warehouseman stipulated to deliver a specified number of gallons of whiskey on return of the receipts and "payment of the whiskey, the United States government and state tax, interest and charges." Held that although the words "payment of the whiskey" were indefinite and ambiguous, it was obvious that a prepayment of some character was required in addition to the government and state tax, interest and charges. By the use of this language the plaintiff was notified of an infirmity in the receipts, and he was bound to inquire its meaning or, failing to do so, suffer the consequences. *Stein v. Rheinstrom et al.*, 47 Minn. 476.

*Same—Construction of—Advanced charges.*

A warehouse receipt stated that the property was deliverable "on payment of charges" without stating their nature or amount, the spaces for the insertion of the amount of "storage" and "advanced" charges respectively being left blank. Held that this was sufficient to put a purchaser of the property upon inquiry as to the amount and character of the charges, and that the warehouseman was not estopped, as against such purchaser, from asserting his lien for "advanced" charges. *Security Bank of Minnesota v. Minneapolis Cold Storage Co.*, 55 Minn. 107.

*Same—Same—Contract of insurance in.*

A storage receipt for wheat delivered at a public elevator,

after stating the rate of storage, contained the following clause: "This charge for storage shall cover the loss by fire only; all other damage by the elements, or by heating or riot, or by the act of God, or which in any way has been caused by the holder of this receipt, shall be excepted." *Held* this, by implication, constituted a contract of insurance by the warehouseman against loss by fire. *Thompson v. Thompson*, 78 Minn. 379.

*Same—Same—Modification of contract.*

Further *held* in above case that by a subsequent agreement modifying the contract so as to provide that no charge should thereafter be made for storing the grain, this implication as to insurance dropped out and thereafter the warehouseman was not such insurer. *Id.*

*Same—Rate of storage.*

The storage receipt provided that the rate of storage "shall not exceed four cents for six months." *Held* this was intended to fix the rate of storage and not the duration of the bailment. *Id.*

*Same—Authority to sell.*

A provision in a storage receipt, issued under G. S. 1894, sec. 7646, that the stored property may be mingled with other property of the same kind or transferred to other elevators or warehouses, does not confer authority on the warehouseman to sell the property described therein. *State v. Cowdery*, 79 Minn. 94.

*Same—Written parts control printed.*

In a contract for the storage of wheat by which a warehouseman had authority to sell, there was an inconsistency or conflict between the written and printed parts thereof; it was held that the written parts controlled. *Murray v. Pillsbury*, 59 Minn. 85.

*Same—Estoppel by.*

Where a warehouseman has issued a negotiable receipt, he is estopped to deny that he has received the goods, in an action

brought against him for their value by an assignee thereof. *M'Neil v. Hill*, 1 Woolworth, 96.

*Same—Pledge by warehouseman.*

The owner of goods, if a warehouseman, can pledge the same by issuing and delivering his own warehouse receipt to the pledgee. *Nat. Ex. Bank of H. v. Wilder*, 34 Minn. 149, modifying *Fishback v. Van Dusen & Co.*, 33 Minn. 111.

*Same—Same—Warehouse act of 1876.*

Under the grain warehouse law of 1876 no distinction can be made between the person who makes an actual delivery of his grain at a public warehouse (actually upon deposit in the warehouse), and the one who leaves it in store with the proprietor as his bailee, taking a warehouse receipt therefor, following the rule laid down in *Nat. Ex. Bank of H. v. Wilder*, 34 Minn. 149. *Eggers et al. v. Nat. Bank of Commerce*, 40 Minn. 182.

*Same—Cold storage—Exemption from liability—Negligence.*

A warehouse receipt issued by a warehouseman to his bailor, exempting the former from liability for loss from certain causes, construed and held that the loss did not result from any of the excepted causes. *Hunter v. Baltimore Packing and Cold Storage Co.*, 75 Minn. 408.

*Same—Negotiability—Transfer by sale without indorsement.*

The title to property represented by a warehouse receipt may be passed by the sale, transfer and delivery of the receipt for a valuable consideration, although not in the form of an indorsement. *State v. Loomis*, 27 Minn. 521; *Pease v. Rush*, 2 Minn. 89.

*Same—Bona fide holder protected.*

A public warehouseman issued numerous receipts for wheat stored in his warehouse, some of which were in the hands of the plaintiff, he having acquired them in good faith. The warehouseman then shipped the wheat to defendants, commission merchants, who sold the same and applied the proceeds to a debt due them from the warehouseman. Held this was a

conversion on the part of defendants and that they were liable to plaintiff for value of the wheat. *Dollif v. Robbins*, 83 Minn. 498.

*Same—Purchaser of, must exercise ordinary prudence.*

The purchaser of what purports to be, or is said to be, negotiable paper, must exercise ordinary prudence in respect to knowledge derived from an inspection of the paper. *Stein v. Rheinstrom et al.*, 47 Minn. 476.

*Same—Implied contract of insurance passes with assignment.*

Where a warehouse receipt contains an implied contract of insurance of the wheat stored, *held* that an assignment of such contract of insurance passed by a transfer of the storage receipt. *Thompson v. Thompson*, 78 Minn. 379.

*Same—As collateral—Payments from bill of sale or from receipts—Burden of proof on defendant—Judgment sustained by findings.*

According to the findings of the court, prior to the execution of the bill of sale, the insolvent had executed, as security for his indebtedness to the defendant, warehouse receipts for chattel property, some of which were afterwards also included in the bill of sale referred to. The defendant permitted the insolvent to retain possession of all the property covered by either the receipts or the bill of sale, to sell and dispose of it and to pay part of the proceeds to apply to the indebtedness for which the property was security, and to use part in his own business. The payments sought to be recovered in this action were made out of the proceeds of property covered by either or both the warehouse receipts and the bill of sale, but the court did not find, except as to \$700, what amount of such payments was made out of proceeds of property covered by the warehouse receipts. *Held* that, under the circumstances, the burden was on the defendant to show what part of the payments was made out of the proceeds of property covered by warehouse receipts, and hence that the findings, as made, justified an order for judgment against the defendant for the full amount of the pay-

ments except the \$700. *Clarke v. Nat. Citizens Bank of Mankato*, 74 Minn. 58.

*Same*—“Exchange tickets” and “inspector’s tickets” for same property both outstanding—Liability.

The defendant, a railroad company, issued to the plaintiff, “inspector’s ticket” for wheat stored with it, and, upon the presentation of the ticket to the agent of the railroad, it issued, in lieu thereof, in accordance with its custom, an “exchange ticket.” It appeared that in some manner the original “inspector’s ticket” found its way into the hands of other parties, who presented the same to defendant and obtained possession of the wheat. Upon demand, by the plaintiff, for the wheat, the defendant refused to deliver, alleging that it had already made delivery thereof. The court held that the delivery by the defendant to one holding “inspector’s ticket” was an affair between the defendant and its agent or such other person, with which the plaintiff had no concern, and that the plaintiff was, therefore, entitled to judgment against the defendant for the value of the wheat. *Lewis et al. v. St. Paul & S. C. R. R. Co.*, 20 Minn. 260.

*Same*—Informal receipts—Warehouseman not estopped by.

A warehouseman issued a receipt in the following form:

No. 711.

Account A. P. Foster.

41.25 bushels. . . . . No. 2 wheat.

20 sacks.

Dyer.

J. G. Swart.

Minneiska, Sept. 29, 1866.

The owner disposed of this receipt and after several transfers it became the property of the plaintiff. The warehouseman stored the wheat, represented by this receipt, in a separate bin and, when the plaintiff demanded the same of him, the identical wheat deposited was tendered for delivery. The plaintiff declined to receive the same on the ground that it was inferior to No. 2 wheat, as stated on the receipt. In an action

against the warehouseman, it was *held* that this receipt contained no representation that the defendant had agreed to deliver to Foster, or his assigns, No. 2 wheat; that it did not constitute the contract between the warehouseman and Foster and, to ascertain what this agreement was, it was necessary for the plaintiff to go outside of the receipt and to inquire for the other facts. Further, that the defendant was not estopped by the terms of this receipt. *Robson v. Swart*, 14 Minn. 371; *Herrick et al. v. Barnes*, 78 Minn. 475.

*Same—Contract for sale and storage construed.*

A certain contract construed and *held* to be an agreement by the owner of grain giving the warehouseman authority to sell it as the agent of the owner, and not merely a contract for storage, except such temporary storage as is incident to receiving, shipping and selling. *Murray v. Pillsbury*, 59 Minn. 85.

*Same—Indictment for larceny of receipt—Cannot plead want of authority.*

The defendant was proceeded against under an indictment charging him with the larceny of certain warehouse receipts, which were issued by a railroad company acting in the capacity of a warehouseman. The defendant, among other defenses, alleged that the receipts issued by the railroad company were not warehouse receipts, within the meaning of the statutes, and, under its corporate powers, it had no authority to issue such receipts. In this regard, the court *held* that the railroad had assumed the legal right to exercise the requisite authority, and, having reaped the benefit of the transaction, it would be estopped from setting up a want of authority in any action brought on the receipts, by any lawful holder thereof. Further, that, if the railroad company could interpose no such defense against its liability, upon the receipts, certainly the party who had feloniously obtained possession thereof could not be heard to assert it in answer to indictment for the theft. *State v. Loomis*, 27 Minn. 521.

*Same—Contract—Parol evidence.*

Where a writing embraces both a receipt and a contract, the

contract cannot be varied by parol, any more than if it were a separate instrument. *Tarbell v. Farmer's Mutual Elevator Co.*, 44 Minn. 471.

*Same—Same—Same—Firm name.*

Defendant, Thompson, was doing business in the name of Smith & Thompson, and the storage receipt was signed in that name. *Held* the terms of the receipt could not for that reason be varied by parol, except so far as to explain the fact that defendant was doing business under such firm name. *Thompson v. Thompson*, 78 Minn. 379.

*Same—Conversion of wheat—Evidence.*

Rule applied and evidence considered in an action, by the holder of storage receipts for wheat issued by a warehouseman, against a purchaser of the wheat from the warehouseman for its conversion, and *held*, (1) that it was error for the trial court to dismiss the action without making findings of fact; (2) that the evidence would have sustained a finding to the effect that the title to the wheat in question was in plaintiffs, and that it did not require, as a matter of law, a finding that they consented to the sale of the wheat to the defendant and received the purchase price therefor; (3) that if the storage receipts were intended by the parties thereto to cover the wheat actually in store, a misdescription of the grade thereof in the receipts would not, as between the parties, affect the title of the holder of the receipts to the wheat. *Herrick v. Barnes*, 78 Minn. 475.

R.

*Bills of lading in name of bank discounting draft—Conversion.*

Y., a warehouseman, having in his warehouse wheat deposited by others for storage, shipped it without their consent to Chicago; took bills of lading in which the bank of K. was named as consignee; drew his drafts on the parties in Chicago for whom the wheat was destined; procured the bank to discount them, delivering to it his bills of lading as security for them. The bank indorsed the bills in blank, and forwarded them, with the drafts, to its correspondent in Chicago, and the latter on payment of the drafts delivered the bills of lading to the drawee.

*Held* that this did not render the bank liable, as for a conversion, to the owners of the wheat. *Lenthold et al. v. Fairchild et al.*, 35 Minn. 99.

## U.

*Building grain elevator and carrying on grain business, by the state, are not the regulation of that business—Unconstitutional law.*

Laws, 1893, ch. 30, entitled, "An Act to provide for the purchase of a site and for the erection of a state elevator or warehouse at Duluth for public storage of grain," etc., is not an exercise of the police power of the state to regulate the business of receiving, weighing and inspecting grain in elevators. It has no relation to the regulation of the business, but provides for the state itself engaging in carrying it on. *Ruppe v. Becker*, 56 Min. 100.

*Same—In violation of art. 9, sec. 5, of the Constitution.*

The act in question is in violation of the Constitution, art. 9, sec. 5, providing that "the state shall never contract any debts for works of internal improvement or be a party in carrying on such works." *Id.*

*Regulation of carriers—Unconstitutional law.*

The provision in Laws, 1895, ch. 149, sec. 11, requiring railroads and transportation companies to turn over to a storage company or public warehouse all property which the consignee fails to call for or receive within twenty days after notice of its arrival, is unconstitutional and void. *State of Minnesota v. Chicago, M. & St. P. Ry. Co.*, 68 Minn. 381.

*Warehouse for owner's grain—Must have license—Laws, 1895, ch. 148, applicable and held constitutional.*

The defendant operated a grain warehouse, in a village in this state, in which no grain was stored but the defendant's own, which he purchased of farmers at the warehouse where the grain was delivered and where it was weighed and graded by defendant on his own scales and with his own appliances. *Held* that the business so carried on was of such a public character, and sufficiently affected with public interest, that the legislature could require persons operating such warehouse to

take out a license therefor as provided in Laws, 1895, ch. 148, and that this requirement was not repugnant to the Constitution of the United States. *State ex rel. Railroad and Warehouse Commission, etc. v. W. W. Cargill Co.*, 77 Minn. 223, aff'd 180 U. S. 452.

## CHAPTER XXIV.

**MISSISSIPPI.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Sale of goods for :**

When the consignee or owner of any goods or articles transported on any railroad cannot be found or refuses to receive the same or pay the charges, or neglects to do so for an unreasonable time, application may be made by the railroad company or its agent to a justice of the peace for an order of sale; and if it be made to appear that the goods have been transported by the company, and that the consignee or owner cannot be found, or refuses or neglects to pay the costs and charges for transportation, or to receive the goods, the justice shall issue an order directed to the sheriff, or any constable or marshal, directing the sale of the goods at public vendue, at such time as the justice may direct, and the payment out of the proceeds of sale of the charges on such goods, and all costs which have accrued in procuring the order and making the sale; and should there be a balance left, it shall be paid into the county treasury, and the owner of the goods may receive the same out of the treasury, on the order of the board of supervisors, if applied for within one year, but not afterwards. Perishable goods may be sold, as herein provided, according to the exigency, if not immediately called for and taken. Code, Miss. 1892, sec. 2108.

**The same extended to watercraft and warehousemen :**

The owners of steamboats and other watercraft, and warehousemen, have the right to enforce charges for freight and storage in accordance with the provisions of the last preceding section, on goods which have been transported or stored by them where the consignee or owner cannot be found, or refuses or neglects to pay such charges. *Id.* sec. 2109.

**Powers of mayor and board of aldermen :**

The mayor and board of aldermen of every city, town, and village shall have the care, management, and control of the city, town, or village, and its property and finances, and shall have power to enact ordinances for the purposes hereinafter named, and such as are not repugnant to the laws of the state, and such ordinances to alter, modify, and repeal; and they shall have power to regulate parks, public grounds, depots, depot grounds, and places of storage of freight and goods within corporate limits, and to provide for and regulate the construction and passage of railways and street railroads through the streets, avenues, alleys, or lanes, and public grounds of the municipality; but a person or company to whom the right and privilege shall, at any time, be granted by the authorities of a city, town, or village to construct railroads and street railroads through the municipality, shall not have the exclusive privilege to do so. *Id.* secs. 2925, 2931.

A privilege tax was levied upon public warehouses by ch. 5, Laws of Miss. 1898, p. 29, as follows:

On each public warehouse where storage is charged, in villages of three hundred inhabitants or less . . . . .	\$2.50
In towns or villages of five hundred or less inhabitants, and not less than three hundred inhabitants . . . . .	5.00
In towns of over five hundred and less than one thousand inhabitants . . . . .	10.00
In towns of over one thousand inhabitants and less than two thousand inhabitants . . . . .	15.00
In cities or towns of over two thousand inhabitants . . . . .	20.00

## DECISIONS AFFECTING WAREHOUSEMEN.

**B.***Ordinary care and diligence.*

It is only required of a warehouseman that he should exercise reasonable and ordinary diligence in the keeping and preservation of articles intrusted to him, such as men exercise in their own private affairs. *Cowles v. Pointer*, 26 Miss. 253; *Archer et al. v. Sinclair et al.*, 49 Miss. 343; *Ill. Cent. R. R. Co. v. Tronstine & Co.*, 64 Miss. 834; *Merchant's Wharfboat Assn. v. Wood & Co.*, 64 Miss. 661.

*Same—Construction of warehouse—Requirements.*

A warehouseman is not required by law to construct his buildings secure from all possible contingencies, but they are sufficient if reasonably and ordinarily safe against ordinary and common occurrences. *Cowles v. Pointer*, 26 Miss. 253.

**H.***Lien—Lost by surrender of goods—Warehouseman has not a general lien for balance due.*

The lien of a warehouseman is a common-law lien, which is a creature of policy, and is a specific or particular lien which attaches to each separate bailment and is lost when the particular articles of each bailment are delivered to the bailor, or his assignee. Therefore, where the plaintiff sued the defendant, in replevin, for the recovery of fifty-nine bales of cotton, alleging that he had made tender of all charges due thereon and the warehouseman refused to deliver unless plaintiff also paid charges upon cotton previously stored and delivered, judgment was given for the plaintiff. *Shingleur-Johnson & Co. v. Canton Cotton Warehouse Co.*, 78 Miss. 875.

*Same—Section 2682, Code, 1892, construed.*

The contention that a warehouseman, under section 2682, Code, 1892, has a lien on cotton raised in this state, for storage, and other charges connected therewith, is not supported by any reasonable construction of that statute. *Id.*

**K.**

*Property taken under legal process—Duty and liability of bailee.*

If cotton, stored in a warehouse, be seized, under legal process, against any other person than the warehouseman or the owner, and the warehouseman give notice of such seizure and of all facts known to him, or which might have been known to him by the exercise of ordinary care and inquiry, to the owner, the warehouseman is relieved from liability; and, in the absence of the claim of other parties, he would be justified in acting as if the person, to whom the receipts had been given, had continued owner. The seizure of property under legal process against the owner is a legal discharge of the bailee. *Mortimore v. Ragsdale*, 62 Miss. 86.

**L.**

*Replevin—When bailor cannot maintain.*

A bailor cannot maintain an action of replevin for the use of the pledgee, of his warehouse receipts, against a warehouseman with whom the property is stored. The pledgee alone can maintain replevin or trover against the warehouseman. *Selleck v. Macon Compress Co.*, 72 Miss. 1019; *Mortimore v. Ragsdale*, 62 Miss. 86.

**N.**

*What constitutes prima facie case.*

Where the plaintiff in an action against a warehouseman had introduced the warehouse receipts and proved a demand made upon the defendant, or his agent, for the property therein described, at any time before the institution of the suit, he had established a *prima facie* right to recover. *Mortimore v. Ragsdale*, 62 Miss. 86.

**P.**

*Same—Negligence of carrier employed by owner cannot be imputed to latter—Instruction to jury.*

The owner of cotton shipped the same, by a carrier who had an arrangement with the defendant warehouseman, under which all cotton received by it should be stored with the defendant, if necessary, to await the arrival of a steamboat. The evidence showed that the owner knew nothing of this arrangement, and that the warehouse containing the cotton was de-

stroyed without negligence on the part of the warehouseman. In an action by the owner against the warehouseman, the contention was made by the defendant that if the place where the cotton was stored was dangerous, it was known to the railroad company, and, as it was the agent of the owner, such knowledge was imputable to the owner. It was *held* that this contention could not be sustained. It was further *held* that an instruction to the jury that the conditions and surroundings of the place in which the cotton was stored constituted a warning to the defendant of the danger of fire, and that although the fire did not originate from either of the enumerated conditions that the defendant was nevertheless responsible therefor, was erroneous. *MERCHANTS' WHARFBOAT ASSN. v. WOOD & CO.*, 64 Miss. 661.

#### Q.

*Warehouse receipts—Negotiability—Transfer without indorsement.*

A warehouse receipt provided that it was transferable only by indorsement and delivery thereof. In a case where the property, represented by such a receipt, was sold, and there was no indorsement of the receipt made, it was *held* that, as between the parties, this was a valid transfer of the property. *Shingleur-Johnson & Co. v. Canton Cotton Warehouse Co.*, 78 Miss. 875.

*Same—Delivery without the return of receipts to true owner—Burden of proof.*

Property stored in a warehouse, for which A held the receipt, is sold by him to B, but the receipts therefor were not transferred to B. In such a case, it was *held* that a delivery by the warehouseman to B, of the property represented, was legal, notwithstanding that the receipts were not taken up by the warehouseman and were not indorsed to B, for such delivery was one to the true owner. But the burden of establishing the right of B to receive the property was upon the warehouseman. *Mortimore v. Ragsdale*, 62 Miss. 86.

*Same—Action by assignee of unindorsed receipt—Objection must be made at trial.*

The plaintiff purchased certain property and obtained ware-

house receipts representing the same. The receipts were not indorsed to him. In an action of replevin brought by him against the warehouseman for the recovery of the property, it was held, by the appellate court, that, as no objection had been made in the trial court to the receipts because not indorsed, objection now made, for the first time, comes too late. *Shingleur-Johnson & Co. v. Canton Cotton Warehouse Co.*, 78 Miss. 875.

## R.

### *Bill of lading—Exceptions therein.*

Common carriers may obviate the rigor of the law holding them liable as insurers of goods intrusted to them by inserting in the bill of lading proper exceptions. *Gilmore v. Carman*, 1 S. & M. 279.

### *Same—Meaning of “inevitable accident.”*

A provision in a bill of lading providing that a carrier was not responsible for loss resulting from “inevitable accident” held that this phrase was synonymous with “act of God.” *Neal v. Saunderson*, 2 S. & M. 572.

### *Same—Not conclusive as to ownership.*

The names of the consignor and the consignee, stated in a bill of lading, are not conclusive as to the ownership of the property represented thereby. Testimony will be received to establish the facts as to the real ownership. *Fast v. Canton, A. & N. R. R. Co.*, 77 Miss. 498.

## CHAPTER XXV.

**MISSOURI.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Warehouses and storehouses declared public warehouses :**

That all warehouses or storehouses situated in cities of over fifty thousand inhabitants, and wherein other property than grain is stored for a compensation, are declared to be public warehouses. Laws, 1895, p. 282.

**License for public warehouse :**

The proprietor, lessee or manager of any public warehouse provided for by this chapter shall be required, before transacting any business in such warehouse, to procure from the circuit court of the county in which such warehouse is situated—or if to procure license for a public warehouse in the city of St. Louis, application shall be made to the circuit court of said city—a license permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws or this state, which license shall be issued by the clerk of said court upon written application, which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same; or if the warehouse be owned by or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; and the said license shall give authority to carry on and conduct the business of a public warehouse, other than a warehouse for the storage of grain, in accordance with the laws of this state and shall be revocable by the said court upon a summary proceeding before the court, upon the complaint of any person, in writing, setting forth the particular violation of the law to be sustained by satisfactory proof, to be taken in such manner as may be directed by the court. *Id.* p. 282.

**Public warehouseman to give bond :**

The person or persons receiving a license under the provisions of this chapter shall file with the clerk of the court granting the same, a bond to the people of the state of Missouri, with good and sufficient security, to be approved by said court, in the penal sum of twenty-five thousand dollars, conditioned for the faithful performance of his or their duties as public warehouseman or warehousemen, and as security for the payment of all penalties and damages found and adjudged by due course of law, for violation of any clause of this chapter, or of chapter 79 of the Revised Statutes of Missouri, 1899, and his or their full and unreserved compliance with the laws of this state in relation thereto. *Id.* p. 282.

**Transacting business without a license—Penalty :**

Any person or persons who shall transact within a city of over fifty thousand inhabitants, the business of storing for compensation other property than grain, without first procuring license and giving a bond as herein provided, or who shall continue to transact such business after such license has been revoked, or such bond may have become void or found insufficient security for the penal sum in which it is executed, by the court approving the same (save only that he may be permitted to deliver property previously stored in such warehouse), shall be guilty of a misdemeanor, and upon conviction, be fined in a sum not less than \$100 nor more than \$500 for each and every day such business is carried on; and the court that issued may refuse to renew any license, or grant a new one, to any person whose license has been revoked, within one year from the time same was revoked. *Id.* p. 282.

**Property to be sold for storage charges :**

If the owner of any goods, merchandise or other property shall store the same in any warehouse created by this chapter, and shall not pay the storage charges upon the same within a period of sixty days after said charges have become due, it shall be lawful for the warehouseman to sell such goods, merchandise or other property, or so much thereof as will pay all storage and other charges, at auction to the highest bidder, first having

given either twenty days' notice by advertisement in a daily paper, or four weeks' notice by advertisement in a weekly paper, of the time and place of the sale, and having further given notice to the owner by mailing him, at least twenty days before the day of sale, if his address is known, a notice of the time and place of sale; and if there be any surplus left after paying the storage charges, cost of advertising and all other just and reasonable charges, the same shall be paid over to the rightful owner of said property at any time thereafter, upon demand being made therefor within sixty days; and if no such demand for such surplus is made within sixty days after the time of such sale, then said surplus shall be paid into the county treasury, subject to the order of the owner. *Id.* p. 282.

**Warehouseman, etc., not to issue receipt until goods actually in store :**

No warehouseman, wharfinger, or other person, shall issue any receipt or other voucher for any goods, wares, merchandise, grain, flour, or other produce or commodity, to any person or persons purporting to be the holder, owner or owners thereof, unless such goods, wares, merchandise, grain, or other produce or commodity, shall have been actually received into store or upon the premises of such warehouseman, wharfinger, or other person, and shall be in the store or on the premises aforesaid and under his control at the time of issuing such receipt. R. S. 1889, sec. 739g.

**Not to issue any receipt for money loaned, etc., until goods actually in store :**

No warehouseman, wharfinger, or other person, shall issue any receipt or other voucher upon any goods, wares, merchandise, grain, flour, or other produce or commodity, to any person or persons, for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain, flour, or other produce or commodity, shall be, at the time of issuing such receipt, in the custody of such warehouseman, wharfinger, or other person, and shall be in store or upon the premises and under his control at the time of issuing such receipt or other voucher, as aforesaid. *Id.* sec. 740.

**Not to issue second receipt—When :**

No warehouseman, wharfinger, or other person, shall issue any second or duplicate receipt for any goods, wares, merchandise, grain, flour, or other produce or commodity, while any former receipt for any such goods, wares, merchandise, grain, flour, or other produce or commodity, as aforesaid, or any part thereof, shall be outstanding and uncanceled, without writing across the face of the same *duplicate*. *Id.* see. 741*h*.

**Not to sell, etc., goods without written assent of person holding receipt :**

No warehouseman, wharfinger, or other person, shall sell or in-  
eum-ber, ship, transfer, or in any manner remove, or permit to be  
shipped, transferred or removed beyond his control, any goods,  
wares, merchandise, grain, flour, or other produce or commodity,  
for which a receipt shall have been given by him, as aforesaid,  
whether received for storing, shipping, grinding, manufacturing,  
or other purpose, without the written assent of the person or  
persons holding such receipt. *Id.* see. 742*i*.

**Not to give shipping receipt until goods are actually on boat, etc. :**

No master, owner or agent of any boat or vessel of any de-  
scription, forwarder, or officer or agent of any railroad, trans-  
fer or transportation company, or other person, shall sign or  
give any bill of lading, receipt or other voucher or document  
for any merchandise or property, by which it shall appear that  
such merchandise or property has been shipped on board of  
any boat, vessel, railroad car or other vehicle, unless the same  
shall have been actually shipped and put on board, and shall be  
at the time actually on board or delivered to such boat, vessel,  
car or other vehicle, to be carried and conveyed as expressed in  
such bill of lading, receipt or other voucher or document. *Id.*  
sec. 743*j*.

**Receipts, bills of lading, etc., declared negotiable :**

All receipts issued or given by any warehouseman, or other  
person or firm, and all bills of lading, transportation receipts  
and contracts of affreightment, issued or given by any person,  
boat, railroad or transportation or transfer company, for goods,

wares, merchandise, grain, flour or other produce, shall be and are hereby made negotiable by written indorsement thereon, and delivery in the same manner as bills of exchange and promissory notes; and no printed or written conditions, clauses or provisions inserted in or attached to any such receipts, bills of lading or contracts, shall in any way limit the negotiability or affect any negotiation thereof, nor in any manner impair the right and duties of the parties thereto, or persons interested therein; and every such condition, clause or provision purporting to limit or affect the rights, duties or liabilities created or declared in this chapter, shall be void and of no force or effect. *Id.* sec. 744k.

#### **How transferred—Lien created—Exemption :**

Warehouse receipts given by any warehouseman, wharfinger or other person or firm, for any goods, wares, merchandise, grain, flour or other produce or commodity, stored or deposited, and all bills of lading and transportation receipts of every kind, given by any carrier, boat, vessel, railroad, transportation or transfer company, may be transferred by indorsement in writing thereon, and the delivery thereof so indorsed; and any and all persons to whom the same may be so transferred shall be deemed and *held* to be the owner of such goods, wares, merchandise, grain, flour or other produce or commodity, so far as to give validity to any pledge, lien or transfer given, made or created thereby, as on the faith thereof, and no property so stored or deposited, as specified in such bills of lading or receipts, shall be delivered, except on surrender and cancellation of such receipts and bills of lading: *Provided, however,* That all such receipts and bills of lading, which shall have the words *not negotiable* plainly written or stamped on the face thereof, shall be exempt from the provisions of this act. *Id.* sec. 745l.

#### **Penalty for violation of the provisions of this chapter :**

Any warehouseman, wharfinger, forwarder or other person who shall violate any of the provisions of this chapter shall be deemed guilty of a criminal offense, and, upon indictment and conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisonment in the penitentiary or this state

not exceeding five years, or both; and all and every person or persons aggrieved by the violation of any of the provisions of this chapter may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this chapter, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation, as aforesaid, before any court of competent jurisdiction, whether such person or persons shall have been convicted of fraud, as aforesaid, under this chapter, or not. *Id.* see. 746*m*.

#### **This chapter applicable to bills of lading :**

All the provisions of this chapter shall apply and be applicable to bills of lading, and to all persons or corporations, their agents or servants, that shall or may issue bills of lading of any kind or description, the same as if the words *forwarder and bills of lading* were mentioned in every section of this chapter. *Id.* see. 747*n*.

#### **Exception as to application :**

So much of the preceding sections of this chapter as forbids the delivery of property except on surrender and cancellation of the original receipt or bill of lading, or the indorsement of such delivery thereon in case of partial delivery, shall not apply to property replevied or removed by operation of law. *Id.* see. 748*o*.

#### **Railroad and warehouse commissioners :**

The present board of railroad commissioners of the state of Missouri shall be charged with the supervision of the execution of the details of this article, and shall hereafter be known as the board of railroad and warehouse commissioners of the state of Missouri. *Id.* see. 5605.

#### **Board to appoint chief inspector—Duties :**

It shall be the duty of the board of railroad and warehouse commissioners to appoint a suitable person, who shall not be a member of the board of trade, who shall not be interested, either directly or indirectly, in any warehouse in this state, who shall be a grain expert, and who shall be known as the chief inspector

of grain for the state of Missouri, whose term of service as such shall continue for two years from the date of his appointment under this article, and further terms of office of the chief inspector shall be for four years, commencing from the date of expiration of service of the first incumbent. It shall be the duty of the chief inspector to have a general supervision of the inspection of grain, as required by this article or laws of this state under the immediate direction of the board of railroad and warehouse commissioners of the state of Missouri. *Id.* sec. 5606.

#### **Public warehouses :**

All buildings, elevators or warehouses, wherever state grain inspection may be established by the state board of railroad and warehouse commissioners in this state, and having a capacity of not less than fifty thousand bushels, erected and operated, or which hereafter may be erected and operated, by any person or persons, association, copartnership or corporation, for the purpose of storing the grain of different owners for a compensation, are hereby declared public warehouses, and the person or persons, associations, copartnership or corporation owning such building or buildings, elevator or elevators, warehouse or warehouses, which are now or may hereafter be located or doing business within this state, as above described, whether said owners or operators reside within this state or not, are public warehousemen within the meaning of this section. *Id.* sec. 5607, amended, Laws, 1893, p. 180g.

#### **License for public warehouse :**

The proprietor, lessee or manager of any public warehouse shall be required, before transacting any business in such warehouse, to procure from the circuit court of the county in which such warehouse is situated—or if to procure license for a public warehouse in the city of St. Louis, application shall be made to the circuit court of said city—a license permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by the clerk of said court upon written application, which shall set forth the location and name of such warehouse, and the

individual name of each person interested as owner or principal in the management of the same, or, if the warehouse be owned by or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; and the said license shall give authority to carry on and conduct the business of a public warehouse in accordance with the laws of this state, and shall be revocable by the said court upon a summary proceeding before the court upon the complaint of any person, in writing, setting forth the particular violation of law, to be sustained by satisfactory proof to be taken in such manner as may be directed by the court. *Id.* sec. 5608.

**Public warehousemen to give bond:**

The person or persons receiving a license as herein provided shall file with the clerk of the court granting the same a bond to the people of the state of Missouri, with good and sufficient security to be approved by said court, in the penal sums as per the following schedule of capacities by measurement: For a public warehouse with a capacity not exceeding 50,000 bushels, \$2,500. For a public warehouse with a capacity of more than 50,000 bushels and not exceeding 100,000 bushels, \$5,000. For a public warehouse with a capacity of more than 100,000 and not exceeding 200,000 bushels, \$10,000. For a public warehouse with a capacity of more than 200,000 bushels and not exceeding 300,000 bushels, \$15,000. For a public warehouse with a capacity of more than 300,000 bushels and not exceeding 400,000 bushels, \$20,000. For a public warehouse with a capacity of more than 400,000 bushels and not exceeding 500,000 bushels, \$25,000. For a public warehouse with a capacity of more than 500,000 bushels and not exceeding 750,000 bushels, \$37,500. For a public warehouse with a capacity of more than 750,000 bushels and not exceeding 1,000,000 bushels, \$50,000. For a public warehouse with a capacity exceeding 1,000,000 bushels, \$100,000—conditioned for the faithful performance of his or their duties as public warehouseman or warehousemen, as security for any penalites found by due course of law for violation of any clause of this article, and his or their full and unreserved compliance with the laws of this state in relation thereto. *Id.* sec. 5609.

**Transacting business without a license—Penalty :**

Any person or persons who shall transact the business of public warehouseman or warehousemen without first procuring license and giving a bond as herein provided, or who shall continue to transact such business after such license has been revoked or such bond may have become void or found insufficient security for the penal sum in which it is executed by the court approving the same, save only that he may be permitted to deliver property previously stored in such warehouse, shall be guilty of a misdemeanor, and upon conviction be fined in a sum not less than \$100 nor more than \$500 for each and every day such business is carried on; and the court that issued may refuse to renew any license or grant a new one to any person or persons whose license has been revoked within one year from the time same was revoked. *Id.* sec. 5610.

**Duties of public warehousemen :**

It shall be the duty of the person or persons doing a public warehouse business under this article to receive for storage any grain that may be tendered to him or them in the usual manner with which warehouses are accustomed to receive the same in the ordinary and usual course of business, and not to discriminate between persons desiring to avail themselves of warehouse facilities, and that the schedule of charges for such warehouse service shall be uniform, regardless of quantities of lots so offered or received. *Id.* sec. 5611.

**Grain to be inspected :**

Receipts of grain by public warehouses in all cases shall be inspected and graded by a duly authorized inspector, and shall be stored with grain of a similar grade, received as near the same time as may be; but if the owner or consignee so requests and the warehouseman consents thereto, his grain of the same grade may be kept in a bin by itself apart from that of the general stock of the warehouse, which bin shall be marked "special," with the name of the owner and with the quantity and grade of same, and the warehouse receipt issued for the same shall state upon its face that the grain is stored in a special bin, giving the number of same and the quantity and grade of the grain so stored. *Id.* sec. 5612.

**No grain to be delivered unless inspected :**

No grain shall be delivered from a public warehouse constituted by this article unless it be inspected by a duly authorized inspector, and found to be of grade called for by receipt presented for such delivery. *Id.* sec. 5613.

**Warehouseman shall not mix grain, etc. :**

Public warehousemen shall not mix any grain of different grades together, nor select or mix different qualities of the same grade for the purpose of storing or delivering the same, nor shall they deliver or attempt to deliver grain of one grade for grain of another grade, nor in any way tamper with grain while in a public warehouse in his or their possession or custody, nor permit the same to be done by others with the view or result of profit to any one; and in no case shall grain of different grades, either from the general stock or from special bins, be mixed together while in store or control of such public warehousemen: *Provided*, that the provisions of this section shall not apply to grain in such warehouse belonging to the owner, lessee or manager thereof; *and provided further*, that any public warehouseman shall, on the written request of the owner of any grain stored in a special bin, upon the production of the receipt thereof, and the indorsement of such written request on such receipt, be required to dry, clean or otherwise change the condition or value of any such lot of grain, and said warehousemen shall then issue a new receipt, correctly describing the amount and grade of such grain. *Id.* sec. 5614, amended, Laws, 1893, p. 180.

**May run grain through machinery, when :**

Whenever it may be necessary, in order to preserve the condition of any bin or lot of grain belonging to any person stored in a public warehouse, to run said grain through machinery to air, clean or otherwise improve its condition, and it is so desired by the owner, this shall be done, but in such manner as will insure the contents of each bin or lot intact, and of the same grade as when stored; but this shall not be done except under the supervision of an authorized inspector under this article. *Id.* sec. 5615, amended, Laws, 1893, p. 180.

**Grain not to be received unless sufficient room :**

Nothing in this article shall be construed so as to compel the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where such warehouse is necessarily closed. *Id.* sec. 5616.

**Shall not receive and mix grain until inspected and graded :**

In all places where there are legally appointed inspectors of grain, no proprietor or manager of a public warehouse shall be permitted to receive any grain and mix the same with grain of other owners in the storage thereof, or stored in special bins, until the same shall have been inspected and graded by such inspector. *Id.* sec. 5617.

**Shall not enter combination :**

No warehouseman, agent or manager of a public warehouse shall enter into any combination, agreement or understanding with any railroad, steamboat, transfer or other carrying corporation, or with any person or persons, by which the property of any person is to be delivered to any public warehouse for storage, or other purpose, contrary to the direction of the owner, his agent or assignee. *Id.* sec. 5618.

**To issue receipts, when—How numbered :**

Upon application of the owner or consignee of grain stored in a public warehouse, the same being accompanied with evidence that all charges which may be a lien upon such grain, including charges for inspection, have been paid, the warehousemen shall issue to the person entitled thereto a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store to be stored with grain of the same grade by inspection received at about the date of the receipt, and that it is deliverable upon the return of the receipts properly indorsed by the person to whose order it was issued, and upon the payment of the charges accrued for storage. All warehouse receipts for grain issued from the same warehouse shall be con-

secutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked upon its face, "duplicate." If the grain for which receipts are issued was received from railroad cars, the number of each car shall be stated in the receipt, with the amount each car contained; if by boat, barge or other vessel, the name of such craft; if from wagons or other means, it shall be so stated; if having been bulked from sacks, the manner of its receipt shall be stated upon the face of such receipt for grain stored. *Id.* sec. 5619.

### **Receipts—How issued, etc.:**

No warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipt; nor shall any receipt be issued for a greater quantity of grain than was contained in the lot stated to have been received; nor shall more than one receipt be issued for the same lot of grain except in cases where receipts for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder; but such new receipt shall bear the same date as the original, and shall state on its face that it is the balance of receipt of the original number, and the receipt upon which a part has been delivered shall be cancelled in the same manner as if the grain it called for had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store; and the new receipts shall state on their face that they are parts of other receipts or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued explaining the change, but no consolidation of receipts or dates differing more than ten days shall be permitted, and all new

receipts issued for old ones cancelled as herein provided shall bear the same dates as those originally issued, as near as may be. *Id.* sec. 5620.

#### **Receipt not to limit or modify responsibility :**

No warehouseman under this article shall insert in any receipt issued for grain received, any language in anywise limiting or modifying his responsibility or liability as imposed by the laws of this state. *Id.* sec. 5621.

#### **Receipt to be marked and cancelled upon delivery of grain :**

Upon delivery of grain from store upon any receipt, such receipt shall be plainly marked across its face with the word "cancelled," with the name of the person cancelling the same, and shall thereafter be void and shall not again be put in circulation, nor shall grain be delivered twice on the same receipt. *Id.* sec. 5622.

#### **Receipts transferable by indorsement :**

Warehouse receipts for property stored in warehouses created by this article as herein described shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another. *Id.* sec. 5623.

#### **Fraudulent receipts—Penalty :**

Any warehouseman of any public warehouse created by this article, employed in such warehouse, or owner or manager connected with the same, who shall be guilty of issuing any warehouse receipt for any property not actually in store at the time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or inspected grade of such property, or who shall remove any property from store except to preserve it from fire or other sudden danger, without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall, when convicted thereof, be guilty of a felony, and shall suffer in addition to other penalties prescribed by this article, im-

prisonment in the penitentiary for not less than one and not more than ten years. *Id.* sec. 5624.

**Grain to be delivered upon presentation of receipt :**

Upon the return of any warehouse receipt issued by persons in charge of warehouses created by this article, and the demand for the delivery of property represented by such receipt, duly indorsed, if not presented by original holder, accompanied by the tender of all proper charges upon the property represented, such property shall be immediately deliverable to the holder of such receipt, and it shall not be subject to further charges for storage after demand for such delivery shall have been made, and deliveries shall be made by the warehouseman in the order in which such receipts are presented and demand for deliveries made. *Id.* sec. 5625.

**Warehousemen to publish schedule rates :**

The manager of every public warehouse created by this article shall be required, within thirty days after the passage of this article, and during the first week in January of each year thereafter, to publish in one or more of the newspapers published in the vicinity in which such warehouse is situated, a schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased during the year, and such published rates or any published reduction of them shall apply to all grain received into such warehouse from any person or souree, and no discrimination shall be made, directly or indirectly, for or against any person, in any charges made by such warehouseman for the storage of grain. The maximum charge for storage and handling of grain, including the cost of receiving and delivering, shall be for the first ten days or part thereof two cents per bushel and for each ten days thereof or part thereof after the first ten days, one half of one cent per bushel. *Id.* sec. 5626.

**To post amount and grade of grain on hand weekly :**

The manager of every public warehouse created under this article shall, on or before Tuesday morning of each week, cause to be made out, and shall keep posted in the business office of his warehouse in a conspicuous place, a statement of the amount

of each kind and grade of grain in store in his warehouse at the close of business on the previous Saturday, and shall also, on each Tuesday morning, render a similar statement, made under oath before some officer authorized by law to administer oaths, by some one connected with such warehouse having personal knowledge of the facts, to the board of railroad and warehouse commissioners. He shall also be required to furnish daily to said board a correct statement of the amount of each kind of grain and grade of same received in store in such warehouse on the previous day; also the amount of each kind of each grade of grain delivered or shipped by such warehouse during the previous day, and what warehouse receipts have been cancelled upon which the grain has been delivered on such day, giving the number of each receipt and the amount, kind and grade of grain received and shipped upon each; also, how much through grain in transit to points outside of the state, if any, may have been received for transshipment, for which warehouse receipts have not been issued, was so shipped or delivered, and the kind and grade of it, when and how much unreceipted grain was received. He shall also make daily report to the commissioners of receipts and deliveries of such unreceipted grain, if any, received for the account of the owners of such warehouse, either directly or indirectly, with the amount, kind and grade of same. He shall also report daily to the commissioners what receipts, if any, have been cancelled and new ones issued in their stead as herein provided for. He shall also make such further statements to the commissioners regarding receipts issued or cancelled as may be necessary for the keeping of a full and correct record of all receipts issued and cancelled and of grain received and delivered.

*Id.* sec. 5627.

**Not responsible for losses by fire, etc.—To give notice of grain damaged :**

The owners of public warehouses under this article shall not be held responsible for any loss or damage to property by fire while in their custody: *Provided*, reasonable care and vigilance be exercised to protect and preserve the same; nor shall they be held liable for damage to grain by heating, if it can be shown that proper care has been exercised in handling and storing the

same, and that such damage was the result of causes beyond their control; but unless public notice be given that some portion of the grain in store is out of condition or becoming so, grain of equal quality to that received shall be delivered on all receipts presented. In case, however, any warehouseman shall discover that any portion of the grain in his warehouse is out of condition or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice by advertisement in a daily newspaper, if one is published in the city or town in which such warehouse is situated, and by posting a notice in the most public place for such a purpose in such city or town, of its actual condition, as near as it can be ascertained. Such notice shall state the kind and grade of the grain, and give the number of the bins in which it is stored, and shall also state in such the receipts outstanding upon which such grain will be delivered, giving the numbers and amounts and dates of each, which receipts shall be those of the oldest dates then in circulation or uncancelled, and the grain represented by which has not previously been declared or received for as out of condition; the enumeration of receipts and identification of grain so discredited shall embrace as near as may be as great a quantity of grain as is contained in such bins, and such grain shall be delivered upon the return and cancellation of the receipts so declared to represent it, upon the request of the owner thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. In case the grain declared out of condition, as herein provided for, shall not be removed from store by the owner thereof within two months from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice by advertisement in a daily newspaper, if there be one published in the city or town where such warehouse is located. *Id.* sec. 5628.

**Negligence how punished :**

Any warehouseman proved guilty of any act of negligence, the effect of which is to depreciate the condition of property stored in the warehouse under his control, shall be held responsible upon the bond given for such warehouse, and in addition thereto, the license given for such warehouse shall be revoked by a proceeding as hereinbefore stated. *Id.* sec. 5629.

**To furnish statement to commissioners :**

It shall be the duty of every owner, lessee and manager of every public warehouse in this state to furnish in writing, under oath, at such times as such railroad and warehouse commissioners shall require and prescribe, a statement concerning the condition and management of his business as such warehouseman. *Id.* sec. 5630.

**To post this article in warehouses :**

All proprietors or managers of public warehouses in this state shall keep posted up at all times in a conspicuous place in their offices, and in each of their warehouses, a printed copy of this article. *Id.* sec. 5631.

**Inspectors and owners to examine grain—Scales, how regulated :**

All persons owning property, or who may be interested in the same, stored in any public warehouse created by this article, and all duly authorized inspectors of such property, shall at all times during ordinary business hours be at full liberty to examine any and all property stored in any public warehouse in this state, and all proper facilities shall be extended to such persons by the warehouseman, his agents and servants, for an examination; and all parts of public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or by any authorized inspector of such property. All scales used for weighing of property in public warehouses shall be subject to examination and test by any duly authorized inspector, the expense of such test by inspector to be paid by the warehouseman where scales are so tested; and no scales shall be used for the weighing of grain after being found incorrect, until put in order and found accurate and ap-

proved for further use by an authorized inspector. *Id.* sec. 5632.

#### **Violation of preceding sections—Penalty :**

A violation of any of the preceding provisions of this article, except in cases covered by sections 7628, 7642, and 7647, by any warehouseman, owner, lessee, manager or employee of public warehouses created by this article, is declared a misdemeanor, and, upon conviction thereof, the violator shall be fined not less than one thousand nor more than five thousand dollars, one fourth of such fine to be awarded and paid to the informer of such misdemeanor. *Id.* sec. 5633.

#### **Duty of prosecuting attorney :**

In all criminal prosecutions against a warehouseman for the violation of any of the provisions of this article, it shall be the duty of the prosecuting attorney of the county in which such prosecution is brought, or, if in the city of St. Louis the duty of the prosecuting attorney of said city, to prosecute the same to a final issue in the name of and on behalf of the people of the state of Missouri. *Id.* sec. 5634.

#### **Injured persons may sue on bond :**

If any warehouseman shall be guilty of a violation of any provision of this article, to the jury of any person by such violation, it shall be lawful for such injured person to bring suit in any court of competent jurisdiction, upon the bond of such warehouseman, in the name of the people of the state of Missouri, to the use of such person. *Id.* sec. 5635.

#### **Chief inspector to have general supervision :**

It shall be the duty of the chief inspector provided for by this article to have a general supervision of the inspection of grain as required by this article or laws of this state, under the advice and immediate direction of the board of railroad and warehouse commissioners. *Id.* sec. 5636.

#### **Chief inspector to nominate deputy and assistants :**

The said chief inspector shall be authorized to nominate to the commissioners such suitable persons in sufficient numbers

as may be deemed qualified for a deputy chief inspector, to be acting chief inspector in the absence of the chief inspector, and assistant inspectors who shall not be interested in any warehouse, and also such other employees as may be necessary to properly conduct the business of his office; and the said commissioners are authorized to make such appointments. *Id.* sec. 5637.

**Chief inspector to take oath and give bond :**

The chief inspector shall, upon entering upon the duties of his office, be required to take an oath that he will faithfully and strictly discharge the duties of his said office of inspector according to law and the rules and regulations prescribing his duties. He shall execute a bond to the people of the state of Missouri in the penal sum of fifty thousand dollars, with sureties to be approved by the board of railroad and warehouse commissioners, conditioned that he will pay all damages to any person or persons who may be injured by reason of his neglect, refusal or failure to comply with the law and the rules and regulations of this article. *Id.* sec. 5638.

**Deputy and assistant inspectors—How qualified :**

The deputy chief inspector and all assistant inspectors appointed under this article shall be under the supervision of the chief inspector, to whom they shall report in detail all services performed by them at the close of each working day. The deputy chief inspector and each assistant inspector shall take the same oath as the chief inspector, and execute a bond in the penal sum of ten thousand dollars, with like conditions and to be approved in like manner as provided for the bond of the chief inspector, which bonds shall be filed in the office of the said commissioners. Suit may be brought upon bonds of either the chief inspector, deputy chief inspector or assistant inspectors, in any court having jurisdiction thereof, in the county or city where the defendant resides, for the use of any person injured by any act of said chief inspector, the deputy chief inspector or assistant inspectors. *Id.* sec. 5639.

**To be governed by rules of commissioners :**

The chief inspector of grain, the deputy chief inspector, as-

sistant inspectors and other employees in connection therewith, shall be governed in their respective duties by such rules and regulations as may be prescribed by the board of railroad and warehouse commissioners, and the said commissioners shall have full power to make all proper rules and regulations for the inspection of grain, not inconsistent with this article, to include the fixing of charges for the inspection of grain and other duties of said chief inspector, deputy chief inspector and assistant inspectors, and to make rules for the collection of same which charges shall be regulated in such manner as will in the judgment of the commissioners, produce sufficient revenue to meet the necessary expenses of the service of inspection, and no more. *Id.* sec. 5640.

#### **Board to fix compensation :**

It shall be the duty of said board of commissioners to fix the amount of compensation to be paid to the chief inspector, deputy chief inspector and assistant inspectors, and all other persons employed in the service of inspection, and prescribe the time and manner of payment. *Id.* sec. 5641.

#### **Malfeasance of inspectors—Penalty :**

Any duly authorized chief inspector, deputy chief inspector or assistant inspector of grain under this article who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other valuable consideration, directly or indirectly, for any neglect of duty as such chief inspector, deputy chief inspector or assistant inspector, or any person who shall improperly influence any chief inspector, deputy chief inspector or assistant inspector of grain under this article in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum not less than five hundred dollars nor more than a thousand dollars, or shall be imprisoned in the county jail, or, if in the city of St. Louis, the jail of said city, not less than six nor more than twelve months, or both such fine and imprisonment, in the discretion of the court. *Id.* sec. 5642.

#### **Impostors punished—How :**

The inspection or grading of grain in this state, whether into

or out of warehouses, elevators, or in cars, barges, wagons or sacks arriving at or shipped from points where state grain inspection is established, must be performed by such persons as may be duly appointed, sworn and have given bond under this article, and any person who shall assume to act as an inspector of grain who has not been duly appointed, sworn, and has given bond under this article, shall be held to be an imposter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail, and if in the city of St. Louis, in the city jail of said city for not less than three months nor more than six months, or both such fine and imprisonment, at the discretion of the court, for every offense so committed. *Id.* sec. 5643, amended, Laws, 1893, p. 182.

#### **Complaint against inspector—How made :**

Upon complaint in writing of any person to the said commissioners supported by satisfactory proof that any person appointed or employed by said commissioners under the provisions of this article has violated any of the rules prescribed for his government, or has been guilty of any improper official act, or has been found incompetent for the duties of his position, such person shall be removed from his employment by the same authority that appointed him, and his place shall be filled, if necessary, by a new appointment. When it shall be deemed necessary to reduce the number of persons appointed or employed, their terms of service shall cease under the orders of the same authority by which they were appointed or employed. *Id.* sec. 5644.

#### **Appeals to board of arbitration :**

In all matters involving doubt on the part of the chief inspector, the deputy chief inspector or any assistant inspector, as to the proper inspection into or out of any warehouse created by this article, or in case any owner, consignee or shipper of grain, or any warehouse manager, shall be dissatisfied with the decision of the chief inspector, the deputy chief inspector or any assistant inspector in matters pertaining to inspection, an appeal

may be made to the committee hereinafter provided for, who shall at once convene, and whose decision, after a careful inquiry into the questions at issue, shall be final. *Id.* sec. 5645.

### **Board of arbitration :**

The board of railroad and warehouse commissioners shall, as soon after the passage of this article as is practicable, appoint committees for the adjustment of differences between inspectors and warehousemen, or owners or representatives of grain, arising from the acts of inspectors—each committee to consist of three persons well known as experts in grain; and a committee shall be appointed in each city or town where public warehouses under this article are located, said committees to be known as the arbitration committees of the board of railroad and warehouse commissioners. *Id.* sec. 5646.

### **Commissioners to make rules for arbitrators :**

The commissioners shall make equitable and legal rules governing said committees' procedure, in the arbitrations, the manner and amount of compensation, the method of appointment and terms of service. *Id.* sec. 5647.

### **Commissioners to establish grades of grains :**

The commissioners shall establish a proper number and standard of grades for the inspection of grain, with due regard to the prevailing usage of the markets of this state, the interests of both producers and dealers, and as near as may be to conform with standards of grade adopted by leading markets of the United States. In addition to which, such grades as may have been or may be hereafter established or recognized in other states and territories, shall prevail and be lawful in this state when used and applied in dealings had in and with grain produced in such other state and territory, so that grain produced in other states and territories may be sold and handled in this state under the same grades prevailing at the place of the production of said grain: *Provided*, no modifications or changes of grade shall be made, or any new ones established, without public notice being given of such contemplated changes for at least twenty days prior thereto, by publication in three daily news-

papers, one of which shall be printed in German, printed in this state; *and provided further*, that no mixture of old or new grades, even though designated by the same name or destination, shall be permitted while in store, except as in this article provided. *Id.* sec. 5648, amended, Laws, 1893, p. 180.

#### **Commissioners to report to governor :**

The board of railroad and warehouse commissioners shall, on or before the first day of January of each year, make a report to the governor of their doings for the preceding year, to contain such facts as will disclose the actual working of the system of the warehouse business of this state as contemplated by this article, and such suggestions thereto as to them may appear pertinent. *Id.* sec. 5649.

#### **Commissioners to examine and visit warehouses :**

Said commissioners shall examine into the condition and management, and all other matters concerning the business of warehouses under this article, in this state, so far as the same may pertain to the relations of such warehouses to the public, and to the security and convenience of persons doing business therewith, and to ascertain whether the officers, directors, managers, lessees, agents and employees comply with the laws of this state now in force or to be in force concerning such warehouses. Whenever it shall come to their knowledge or they shall have reason to believe that any law governing the public warehouses of this state under this article is being or has been violated, they shall cause to be prosecuted or to prosecute all persons guilty of such violation. To enable said commissioners efficiently to perform their duties under this article, it is hereby made their duty to cause one or more of their number, at least once in six months, to visit each warehouse in this state and to personally inquire into the management of such warehouse business. *Id.* sec. 5650.

#### **Books, etc., subject to examination :**

The property, books, records, accounts, papers and proceedings of all such warehousemen as are contemplated by this article, shall at all times during business hours be subject to the examination and inspection of the commissioners, or any

one of them, and they or any one of them shall have power to examine, under oath, any owner, manager, lessee, agent or employee of a public warehouse, and any other person, concerning the condition and management of such warehouse. *Id.* sec. 5651.

#### **Commissioners may subpoena witnesses :**

In making any examination as contemplated by this article, or for the purpose of obtaining information as contemplated by this article, said commissioners shall have power to issue subpoenas for the attendance of witnesses, and may administer oaths. In case any person shall willfully refuse to obey such subpoena, it shall be the duty of the circuit court of any county, if in St. Louis the circuit court of said city, upon application of said commissioners, to issue an attachment for such witness and compel such witness to attend before the commissioners and give his testimony upon such matters as shall be lawfully required by such commissioners; and the said court shall have power to punish for contempt as in other cases of refusal to obey the process and order of such court. *Id.* sec. 5652.

#### **Failure to obey subpoena—Penalty :**

Any person who shall willfully neglect or refuse to obey the process of subpoena issued by said commissioners, and appear and testify as therein required, shall be guilty of a misdemeanor, and shall be liable to arraignment and trial in any court of competent jurisdiction, and on conviction thereof shall be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment of not more than thirty days, or both such fine and imprisonment, in the discretion of the court before which such conviction shall be had. *Id.* sec. 5653.

#### **Duty of attorney-general and prosecuting attorneys :**

It shall be the duty of the attorney-general and the state's attorney in every county, if in cases brought in St. Louis, the state's attorney for said city, on the request of said commissioners, to institute and prosecute any and all suits or proceedings which they or either of them shall be directed by said com-

missioners to institute and prosecute for a violation of this article, or any law of this state concerning public warehouses as constituted by this article, or the officers, employees, owners, operators or agents of such warehouses. *Id.* sec. 5654.

#### **Prosecutions to be in the name of the state :**

All prosecutions under this article shall be in the name of the people of the state of Missouri, and all moneys arising therefrom shall be paid into the state treasury by the sheriff or other officer collecting the same: *Provided*, this article shall not be construed so as to prevent any person entitled to receive a percentage of fines imposed and collected, as a reward for information furnished as hereinbefore stated, which percentage shall be paid to such person by the officer collecting such fine. *Id.* sec. 5655.

#### **Not to deprive persons of common-law remedy :**

Nothing in this article shall deprive any person of any common-law remedy now existing. *Id.* sec. 5656.

#### **Not to affect right to prosecute for damages :**

This article shall not be construed so as to waive or affect the right of any person injured by the violation of any law in regard to warehouses from prosecuting for his private damages in any manner allowed by law. *Id.* sec. 5657.

#### **Weighmasters—Duties of, etc. :**

It shall be the duty of the chief inspector provided for by this article, to nominate to the commissioners suitable persons to act as weighmasters at such points in this state wherever state grain inspection may be established in conformity with section 7655 of this article; said weighmasters shall at the places aforesaid supervise the weighing of all grain before removing from the car, which may be subject for inspection, at all warehouses where there are no such scales as hopper scales, and in such case track scales shall be provided upon which the gross, tare and net weight of each car, wagon or other package shall be taken, but all warehouses having hopper scales the net weight of grain contained in each car, wagon or other package shall be taken, and the inspection of scales and the action and certificate

of such weighmasters in the discharge of their aforesaid duties shall be conclusive upon all parties in interest: *Provided*, that such weighmasters shall have the entire control of such scales. Laws, 1893, p. 182.

#### **Commissioners to fix fees for weighing :**

The board of railroad and warehouse commissioners of the state of Missouri shall fix the fees to be paid for the weighing of grain, which fees shall be paid by the warehouseman, and may be added to the charges for storage, and the said commissioners shall adopt such rules and regulations for the weighing of grain as they shall deem proper. *Id.* p. 182.

#### **Warehousemen to furnish scales—To weigh grain in store —When :**

It shall be the duty of the person or persons doing a public warehouse business under this article to provide and maintain suitable scales, upon which all grain tendered to him or them for storage shall be weighed under the supervision of a weighmaster, as provided for in the preceding section. Said scales shall be located at the most convenient point upon the track of some railroad running into or adjoining such warehouse. It shall further be the duty of the person or persons doing a public warehouse business under this article, at some convenient time, at least once a year, and under the supervision of such weighmaster or other authorized employee of the state grain inspection department, to weigh all grain at such time or times then in store at such warehouse, and to report to the warehouse registrar the result of such weighing and the actual amount of each kind and grade in store. During such time as such weighing is going on, the receiving and shipping of grain into and from such warehouse shall be discontinued until such general weighing has been completed. *Id.* p. 182.

#### **Railroad to furnish scales to weigh grain handled :**

At all terminals or other points within this state wherever state grain inspection may be established, it shall be the duty of all railroads to provide suitable scales upon which all grain handled by them, and not consigned to public warehouses, but subject to inspection, may be weighed as required by this arti-

ele. Said scales shall be located at places to be designated by the board of railroad and warehouse commissioners of this state, and it shall be the duty of said commissioners to see that the provisions of this and all other sections of this article are strictly enforced. *Id.* p. 182.

#### **Weighmasters to give bond—Compensation :**

The weighmasters provided for in this article shall give bond in the sum of five thousand dollars, conditioned for the faithful discharge of their duties, and shall receive such compensation as the board of railroad and warehouse commissioners shall determine. *Id.* p. 182.

#### **Penalty for fraudulent weighing, etc. :**

Any person, association, firm, trust or corporation, or any representative thereof, or any weighmaster, who shall knowingly cheat or falsely weigh any wheat or other agricultural products, or who shall violate the provisions of sections 7677 to 7682, inclusive, or shall do or perform any act or thing therein forbidden, or who shall fail to do and keep the requirements as herein provided, shall be deemed guilty of a misdemeanor, and shall be fined in a sum not less than five hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail, or if in the city of St. Louis the jail of said city, not less than six nor more than twelve months, or both such fine and imprisonment, in the discretion of the court. *Id.* p. 182.

#### **Inspection of tobacco—Term of office and qualifications of inspector :**

There is hereby established in the city of St. Louis, Missouri, a tobacco inspection. The governor shall appoint in the city of St. Louis an inspector of tobacco, who shall hold his office for two years; said inspector shall be a discreet, suitable person, and shall not be interested in any of the tobacco warehouses selling leaf tobacco in the city of St. Louis as a stockholder or otherwise than as tobacco inspector. R. S. 1889, sec. 5580.

#### **Duties of inspector :**

No inspector shall either buy or sell any tobacco, except of

his own raising, but shall auctioneer and cry off all inspected and leaf tobacco, for the owner or agent, sold at the warehouse. *Id.* sec. 5581.

**His bond :**

The inspector shall, before he enters upon the duties of his office, enter into bond to the city of St. Louis, to be approved by the mayor of said city, with sufficient security, in a sum not less than ten thousand dollars, conditioned for the faithful performance of his duties according to law, which bond shall be recorded in the office of the city register and filed in the office of the secretary of state, and a certified copy thereof shall be evidence. *Id.* sec. 5582.

**Book to be kept by him :**

The inspector shall keep a book, in which shall be entered the marks of all tobacco which he may be required to inspect, and he shall inspect and examine the same in due time as it shall be entered in such book, unless otherwise agreed, without favor or partiality, and shall attend at the respective warehouses during all business hours of each regular secular day, whenever called on so to do. *Id.* sec. 5583.

**Penalty for failing to attend :**

Any inspector failing to attend when so requested shall forfeit to the party aggrieved fifty dollars for every such failure, or the aggrieved party may recover all damages he may have sustained by such failure by action on the bond of inspector or by civil action. *Id.* sec. 5584.

**Charges and fees—By whom paid :**

The purchaser and seller shall each pay one half of all warehouse charges, including inspection fees, on all tobacco sold, but when the sale of any tobacco offered is rejected, then the owner or agent shall pay the whole of the warehouse charges, including the inspection fees. *Id.* sec. 5585.

**Warehousekeeper to have tobacco inspected :**

Any person or persons who may erect or shall keep a tobacco warehouse in the city of St. Louis, for the purpose of offering

and selling leaf tobacco prized in hogsheads, shall have such tobacco inspected before sale, by the state inspector appointed in and for the city of St. Louis, and by no other. *Id.* sec. 5586.

**Oath of inspector :**

The oath of the inspector shall be in the form following: I, ——, do solemnly swear that I will carefully and diligently inspect and examine all tobacco which I may be called on to inspect, and that I will not change, alter or give out any tobacco as a sample other than such as shall have been taken from the hogshead for which the receipt to be taken was given, and that I will not, directly or indirectly, be engaged in the manufacturing, shipping or exportation of tobacco, nor will I deal in any manner in the article during the time that I shall continue in office except as expressly permitted by law, but that I will in all things well and faithfully discharge and perform my duty in the office of inspector, according to the best of my skill and judgment, and according to the direction of the law, without fear, favor or affection, malice or partiality, so help me God. *Id.* sec. 5587.

**To be filed, where :**

Such oath shall be filed in the office of the secretary of state, and a violation thereof shall be deemed perjury, and shall subject the party, upon conviction, to the penalties of perjury. *Id.* sec. 5588.

**Hogsheads to be weighed and branded before inspection :**

The inspector of tobacco shall, before any hogshead of tobacco is uncased for inspection by him, cause the same to be carefully weighed and the gross weight marked or branded thereon. *Id.* sec. 5589.

**Mode of inspection :**

After a hogshead has been thus weighed and marked and branded, the inspector shall uncase and break the same in not less than two nor more than four places, and take from each break a like proportion of tobacco as a sample of the whole hogshead that he may inspect, and each hogshead shall be by him carefully weighed in the scales or the balance, and with

the weight kept in the warehouse, and shall be by him marked with the tare of the hogshead, and the quantities of tobacco therein contained, and also with the words "Missouri State Tobacco Inspection." *Id.* sec. 5590.

#### **Tare and net weight:**

The tare, with the addition of ten pounds for weight of sample, shall be deducted from the gross weight; the remainder shall be the net weight, and the inspector shall in all cases deliver to the owner of the purchaser of any hogshead of tobacco the samples which were drawn from the same. Whenever any hogshead of tobacco shall have been weighed under the superintendence of the inspector, and the net weight registered and marked on such hogshead of tobacco, he shall be responsible to the purchaser, owner or agent of the same for the net weight of tobacco so registered and marked on such hogshead of tobacco, reasonable allowance being made for waste in handling. *Id.* sec. 5591.

#### **Samples to be done up, how:**

It shall be the duty of the inspector to have all samples of tobacco drawn by him well tied, tagged and sealed; the card or tag so placed upon the sample shall contain the number, gross weight, net weight and date of inspection, and the seal so used shall contain the words "Missouri State Tobacco Inspection." *Id.* sec. 5592.

#### **Form of certificate of inspection:**

The inspector shall issue a certificate to the owner or agent for each hogshead of tobacco by him inspected, which shall, as near as possible, be in the form following: At \_\_\_\_\_ warehouse in the city of St. Louis, in the state of Missouri, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, inspected for \_\_\_\_\_ one hogshead of leaf tobacco (strips, seraps or stems, as the case may be), number, mark and weight as follows: Number 1, marks 1, gross 1, tare 1, net 1. Witness my hand, the day and year aforesaid.

A\_\_\_\_\_, Inspector.

And the keeper or superintendent of any warehouse where such tobacco is left on storage shall, upon every certificate issued

by the inspector, certify upon the face of the same that said tobacco is on storage and deliverable only on return of said certificate to the holder thereof. *Id.* sec. 5593.

**Hogshead to be restored to good shipping order :**

It shall be the duty of the inspector to attend and see that after the uncasing and inspection of the hogshead of tobacco the same to be replaced to its former condition, and in good shipping order, and that all leaf tobacco belonging to each and every hogshead so opened and inspected be put back as near as possible to where it belonged before the same was uncased. *Id.* sec. 5594.

**Inspector's fees :**

For every hogshead of tobacco inspected in the city of St. Louis, the inspector shall receive twenty-five cents inspection fee, which may be collected with the other warehouse fees. *Id.* sec. 5595.

**Penalty for unauthorized inspection :**

If any person other than the inspector shall inspect any hogshead of tobacco within the city of St. Louis, or if any person occupying any store or warehouse within the city of St. Louis shall suffer or permit any person other than the inspector to inspect any hogshead of tobacco upon the premises occupied by him, such person inspecting the tobacco, and such person or persons suffering and permitting such illegal inspection, shall each be fined in the sum of one hundred dollars for every hogshead of tobacco so inspected to the use of the state, to be recovered by indictment. *Id.* sec. 5596.

**Scales and hands, by whom furnished :**

No inspector shall be required to furnish scales or hands to strip or break tobacco, but the same shall be furnished by the warehouse or any person or persons that may have tobacco inspected in the city of St. Louis. *Id.* sec. 5597.

**Fraudulently packed hogsheads to be marked, how :**

In case the inspector in the inspecting or sampling of any hogshead of tobacco shall find any evidence or indication of its

being falsely or fraudulently packed, it shall be his duty to write across the face of his certificate and across the face of the tag in red ink, "falsely or fraudulently packed," and he shall further give notice to the assembly of dealers before offering said hogshead of tobacco for sale. *Id.* sec. 5598.

#### **Appointment and qualification of deputies:**

The inspector is hereby empowered, if necessary to the convenient dispatch of his respective duties, to appoint one or more deputies at his own cost, for whom he shall be accountable, which deputies are hereby empowered to perform the duties of inspection, and shall be liable to the same penalties as the inspector; said deputies shall take the same oath as prescribed for the inspector, and for whose official conduct the said inspector shall be liable upon his official bond. *Id.* sec. 5599.

#### **Inspectors and warehousekeepers not responsible for natural loss in weights:**

Section 7609 shall not be construed so as to hold the inspector and warehousekeeper, or either of them, responsible for the natural losses of weight that may occur or take place during storage and while the same is undergoing the sweat to which leaf tobacco is subject. R. S. 1889, sec. 5600.

#### **Sales of tobacco to be approved by the owner:**

All tobacco cried off, or offered for sale, shall be subject to the approval of the owner or agent thereof, but it shall be the duty of the said owner or agent to accept or reject the sale of said tobacco before the tobacco sale is over on that day; but in the event of his failure to accept or reject such sale within the time specified as above, it shall be at the option of the purchaser to accept the terms of said sale. *Id.* sec. 5601.

#### **Certificates of inspection negotiable:**

The certificate of a hogshead of tobacco issued by the inspector of tobacco, and countersigned by the keeper or superintendent of the warehouse, shall be negotiable, and the warehouse, store, person or persons under whose charge the package or hogshead of tobacco for which said certificate was issued is stored, shall be responsible for the full value of the same to the

holder of said certificate, loss or damage from elemental causes alone excepted. *Id.* sec. 5602.

#### **Appointment of local inspectors in other towns :**

Nothing in this article shall be so construed as to prevent any other town, city or county from establishing tobacco inspection, when twenty-five freeholders shall petition the governor for the appointment of a tobacco inspector for such local inspection: *Provided*, said inspector so appointed by the governor shall be subject to all the provisions of this article relating to the qualifications, duties and fees of the tobacco inspector for the city of St. Louis, except so far as regards the matter of residence and filing his bond. *Id.* sec. 5603.

#### **Limit of warehouse fees :**

The warehouse fees shall not exceed three dollars for each hogshead, including inspection fee at any one offer. *Id.* sec. 5604.

#### **Common carriers may retain goods until charges are paid :**

When any goods, merchandise or other property shall have been received by any railroad or express company, or other common carrier, commission merchant or warehouseman, and shall not be received by the owner, consignee, or other authorized person, it shall be lawful to hold the same by said carrier, commission merchant or warehouseman, or the same may be stored with some responsible person, and be retained until the freight and all just and reasonable charges be paid. *Id.* sec. 6806.

#### **Property unclaimed to be sold, how :**

If no person calls for said goods, merchandise or other property, within sixty days from the receipt thereof, and pay freight and charges thereon, it shall be lawful for such carrier, commission merchant or warehouseman, to sell such goods, merchandise or other property, or so much thereof at auction, to the highest bidder, as will pay said freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee or consignor, when known, and by advertisement in a daily paper, or if in a weekly paper, four weeks, pub-

lished where such sale is to take place; and if any surplus be left after paying freight, storage, cost of advertising, and all other just and reasonable charges, the same shall be paid over to the rightful owner of said property at any time thereafter, upon demand being made therefor, within sixty days. *Id.* sec. 6807.

**Money not to be loaned to exceed what amount, etc. :**

No incorporation or private bank in this state shall loan its money to any individual, corporation or company, directly or indirectly, or permit any individual, corporation or company to become at any time indebted or be liable to it in a sum exceeding twenty-five per cent of its capital stock actually paid in, or permit a line of loans or credits to any greater amount to any individual or corporation; a permanent surplus, the setting apart of which shall have been certified to the secretary of state, and which cannot be diverted without due notice to said officer, may be taken and considered as a part of the capital stock for the purposes of this section: *Provided*, said surplus is equal to in excess of fifty per cent of the capital stock of said bank: *Provided*, that the provisions in this section shall not be so construed as in anywise to interfere with the rules and regulations of any clearing association in this state in reference to the daily balances between banks: *Provided*, that this section shall not apply to balances due from correspondents subject to draft; and *provided further*, that the discount of the following classes of paper shall not be considered as money borrowed within the meaning of this section, viz.: (1) The discount of bills of exchange drawn in good faith against actually existing values. (2) The discount of paper based upon the collateral security of warehouse receipts covering agricultural and manufactured products in store in elevators and warehouses under the following conditions: First, that the actual market value of the property held in store and covered by such receipts shall at all times exceed at least twenty per cent the amount loaned upon the same. Second, that the full amount of the loans shall at all times be covered by policies of fire insurance issued by companies admitted to do business in this state to the extent of their ability to cover such loans, and then by companies having

sufficient paid-up capital to be so admitted, and all such policies shall be made payable in case of loss to the bank or holder of the warehouse receipts. *Id.* sec. 2758, amended, Laws, 1897, p. 89.

### Shipments of grain in bulk :

Every railroad corporation which shall receive any grain in bulk for transportation to any place within the state shall transport and deliver the same to any consignee, elevator, warehouse or place to whom or to which it may be consigned and directed: *Provided*, such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every such corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages result from any depreciation in the value of such property, by such neglect or refusal to deliver such grain as directed, or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered, and costs of suit, including such reasonable attorney's fees as shall be taxed by the court. And in case of any second or later refusal of such railroad corporation to comply with the requirements of this section, such corporation shall be, by the court, in an action on which such failure or refusal shall be found, adjudged to pay, for the use of the people of this state, a sum of not less than one thousand nor more than five thousand dollars, for each and every such failure or refusal, and this may be a part of the judgment of the court in any second or later proceeding against such corporation. In case any railroad corporation shall be found guilty of having violated, failed or omitted to observe and comply with the requirements of this section, or any part thereof, three or more times, it shall be lawful for any person interested to apply to a court of competent jurisdiction, and obtain the appointment of a receiver to take charge of and manage such railroad corporation until all damages, penalties, costs and expenses adjudged against such cor-

poration for any and every violation shall, together with interest, be fully satisfied. *Id.* sec. 2617.

**Consignments to elevators, etc., declared temporary :**

All consignments of grain to any elevator or public warehouse shall be held to be temporary, and subject to change by the consignee or consignor, at any time previous to the actual unloading of such property from the cars in which it is transported. Notice of any change in consignment may be served by the consignee or any agent of the railroad corporation having the property in possession, who may be in charge of the business of such corporation at the point where such property is to be delivered; and if, after such notice, and while the same remains uncancelled, such property is delivered in any way different from such altered or changed consignment, such railroad corporation shall, at the election of the consignee or person entitled to control such property, be deemed to have illegally appropriated such property to its own use, and shall be liable to pay the owner or consignee of such property the value of the property, and shall forfeit and pay to the owner or consignee the sum of twenty-five dollars, to be recovered by civil action before any court of competent jurisdiction; and no extra charge shall be permitted by the corporation having the custody of such property in consequence of such change of consignment. *Id.* sec. 2618.

**No discrimination allowed in shipping grain—Grain to be weighed and shortage made up :**

Every railroad corporation chartered by or organized under the laws of this state, or doing business within the limits of the same, when desired by any person wishing to ship any grain over its road, shall receive and transport such grain, in bulk or otherwise, within a reasonable time, and load the same either upon its track, at its depot, or at any warehouse adjoining its track or side track, without distinction, discrimination or favor between one shipper and another, and without distinction or discrimination as to the manner in which such grain is offered to it for transportation, or as to the person, warehouse or place to whom or to which it may be consigned; and at all stations where scales are required to be kept, at the time such grain is

received by it for transportation, such corporation shall carefully and correctly weigh the same, and issue to the shipper thereof a receipt or bill of lading for such grain, in which shall be stated the true and correct weight, and such corporation shall weigh out and deliver to such shipper, his consignee or other person entitled to receive the same, at the place of delivery, the full amount of such grain, without any deduction for leakage, shrinkage or other loss on the quantity of the same, except that one half of one per cent shall be allowed for leakage, shrinkage or other loss on bulk grain. In default of such delivery, the corporation so failing to deliver the full amount of such grain shall pay to the person entitled thereto the full market value of any such grain not delivered at the time and place when and where the same should have been delivered. *Id.* see. 2620r.

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NOTE. Companies may be incorporated for the purpose of conducting the warehouse business under chapter xii, art. ix, Revised Statutes of Missouri, 1899.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Warehouse—Definition.*

There is no technical meaning to the word warehouse different from its ordinary significance of storehouse. *The State v. Watson*, 141 Mo. 338; *The State v. Sprague*, 149 Mo. 409.

*Bailment and sale—Option to pay for in money or other property, effect thereof.*

Plaintiff deposited wheat in the defendant's warehouse ; under the agreement between them, defendant was obliged to deliver a certain quantity of flour or of bran, proportional to the amount of wheat deposited. Before demand made, warehouse and contents were destroyed by fire. The court held that in view of the fact that the wheat of the various depositors was mingled with other wheat deposited, and that all of the depositors had a right to demand, according to the terms of the contract, so much flour and bran for each bushel of wheat deposited, and not the flour and bran manufactured out of the wheat deposited by them, such a transaction could be regarded in no other light than as a sale, and was wholly inconsistent with the character of bailment. *O'Neil v. Stone*, 79 Mo. App. 279; *Martin v. Ashland Milling Co.*, 49 Mo. App. 23; *Smith v. Clark*, 21 Wend. 23, overruling *Seymour v. Brown*, 19 Johns. 44. See also *Hurd v. West*, 7 Cow. 752; *Pierce v. Schenck*, 3 Hill, 28; *Norton v. Woodruff*, 2 N. Y. 153; *Mallroy v. Willis*, 2 N. Y. 76.

## B.

*Ordinary care.*

Warehousemen are only bound to take reasonable care of property and are only answerable for losses occasioned by default and neglect. *Gashweiler v. Wabash, St. Louis & Pacific R. R. Co.*, 83 Mo. 112; *Holtzelaw et al. v. Duff*, 27 Mo. 392.

*Same—What constitutes—When a question for the jury and when for the court.*

What constitutes a requisite diligence and care to be exercised by a warehouseman is always one to be determined by

the jury, in view of the surrounding circumstances, when there is substantial evidence upon which to submit to them such an issue; but in the absence of such evidence, it becomes a question of law to be determined by the court. *American Brewing Assn. v. Talbot et al.*, 141 Mo. 674.

*Conversion—What constitutes.*

The action of one in withholding property from the real owner thereof, when demand has been made upon him for it, is in law a conversion thereof. *Foster Woolen Co. v. Woolman*, 87 Mo. App. 658; *Rembaugh v. Phipps*, 75 Mo. 422.

**G.**

*Government bonded warehouse—Vendor's lien—Non-negotiable receipt.*

The plaintiff sued the defendant for the conversion of a number of barrels of whiskey, to which plaintiff alleged he was entitled, pursuant to the receipt issued therefor, by one who had purchased the whiskey from the defendant. It appeared that the defendant had not been paid in full for the whiskey when sold, but had accepted the purchaser's notes in payment of the balance due. Thereupon the whiskey was stored in a government bonded warehouse. The purchaser subsequently pledged the whiskey with the plaintiff, for the payment of a loan and, as security therefor, delivered to him a non-negotiable warehouse receipt. From the above facts, the court held that the warehouse receipt in question only had the effect of transferring the title of the whiskey to the plaintiff, as security for his debt, and was not for value in a sense that would extinguish the equitable right of the defendant to his vendor's lien, and that, therefore, the defendant had a lien thereon for the amount of the unpaid purchase price. *Vogelsang's Admr. v. Fisher*, 128 Mo. 386.

*Same—Vendor's lien not lost by placing goods therein—Nature of this lien fully considered.*

Where whiskey was placed in a government bonded warehouse, it was held that the vendor's lien was not destroyed; that a delivery to such warehouse was not a delivery to the

vendee so as to impair the lien of the vendor. The existence of the vendor's lien presupposes that the title to the goods has passed. It is in no sense a right to rescission, but, on the contrary, proceeds in affirmation of the contract of sale. It is in the nature of a pledge raised or created by law upon the happening of the insolvency of the vendee, to secure the unpaid purchase money to the vendor. *Conrad v. Fisher*, 37 Mo. App. 352.

## II.

*Warehouseman's lien—Goods stored by sheriff—Warehouseman protected—Lien highly favored by law.*

The sheriff attached goods, in an action against the owner thereof, and stored them with the defendant warehouseman, for safe-keeping. The judgment against the owner was discharged and the attachment released. The owner thereupon demanded the goods of the defendant, who refused to surrender the same unless his storage charges were paid, he claiming to have a lien against the goods therefor. The court held that the defendant's lien remained after the attachment was dissolved, and was as binding and as effectual as if the property had been stored by the plaintiff himself, instead of by the constable, who was authorized to do so by law. A warehouseman's lien is highly favored, and the law is against presuming a waiver or extinguishment of it. Further held that the possession by the sheriff was the same as possession by a receiver; in each instance the goods are in custody of the court. *Case Plow Works v. Union Iron Works*, 56 Mo. App. 1; *Ward v. Moffett*, 38 Mo. App. 400; *Wycoff v. Southern Hotel Co.*, 24 Mo. App. 382; *Kneeland v. American Loan & Trust Co.*, 136 U. S. 89.

*Same—Subordinate to right of mortgagee under chattel mortgage.*

Where a mortgagor of goods, without the consent of the mortgagee, under a chattel mortgage, stored the same, it was held that the lien of the warehouseman, for charges, was inferior to the right of the mortgagee. *Vette v. Leonori*, 42 Mo. App. 217.

*Same—Tender of amount due necessary to avoid lien—Excessive demand.*

The mere fact that the demand, made by the bailee of prop-

erty, was either premature or excessive did not avoid his lien from the amount justly chargeable to the bailor. If the bailee desired to terminate the lien all he had to do was to tender the amount which was justly due. *Muench v. Valley National Bank*, 11 Mo. App. 144; *Montieth v. Great Western Printing Co.*, 16 Mo. App. 450.

#### L.

*Replevin—Bailee may maintain.*

A person in possession of goods as bailee may maintain an action of replevin against all persons except the true owner, and even against him if he has a lien for services, advances, and the like, upon them. *Snowden v. Kessler*, 76 Mo. App. 581.

#### M.

*Pledge—Right to possession.*

The pledgor has no right to the possession of the pledge until he pays, or offers to pay, what he owes. Any damage he sustains by the wrongful sale on account of injury actually done to his property, or expense of getting it back, he may recover by the appropriate action. But the pledge itself, or its value, he may only recover by keeping his undertaking. *Schaaf, Admr., v. Fries*, 90 Mo. App. 111.

#### N.

*Misdelivery—When warehouseman not liable.*

A warehouseman is not responsible for the delivery of property intrusted to him to one who presents a proper bill of lading therefor, the warehouseman making proper inquiry, such as would be satisfactory to a prudent business man. *Bush v. St. Louis, K. C. & N. Ry. Co.*, 3 Mo. App. 62.

*Act of God—Lost by flood—Unprecedented rise in river—Burden of proof and the shifting thereof.*

The defendants operated a warehouse situated upon the river front. After unprecedented rains, water arose in the cellar of the warehouse, and the defendants thereupon removed the goods stored to the upper portions thereof. Subsequently the warehouse collapsed. It was held that the warehouseman was not liable; that such result was from inevitable accident, or

what is termed act of God. In such a case, the burden of proof is first upon the bailor to prove the contract and delivery of the goods, then upon the bailee to show the loss and manner thereof; the burden then again shifts to the bailor to establish that the loss was due to the bailee's negligence. *American Brewing Assn. v. Tolbot et al.*, 141 Mo. 674. See also *Fuchs v. St. Louis et al.*, 133 Mo. 168, the doctrine of which was challenged by Sherwood, J., in former decision.

*Same—Larceny and burglary—Warehouse and storehouse synonymous.*

An indictment charged burglary and larceny from a storehouse. It was insisted, on behalf of the defendant, that the trial court erred in allowing evidence to be introduced for burglary of a warehouse and larceny therefrom. The court, answering the above contention, stated that as the defendant was guilty of burglary, it did not concern him if there was an improper designation of the building burglarized, and secondly, the words warehouse and storehouse were synonymous. *State v. Sprague*, 149 Mo. 409.

**P.**

*Contract to insure goods—Warehouseman liable.*

Where a warehouseman agreed with the owner of goods stored with him, at the time of deposit, to have the same fully insured against fire, he is liable for the value thereof, in case of their destruction from this cause. *Dawson v. Waldheim*, 80 Mo. App. 52; *Ferguson v. Pekin Plow Co.*, 141 Mo. 161.

*Loss by fire—Evidence as to location of warehouse—Pleading.*

The defendant was sued, charged with liability as a warehouseman, for the destruction by fire of goods belonging to the plaintiff, stored in the defendant's warehouse. The petition alleged that the defendant failed and neglected to exercise reasonable care of said flour while so stored. It was not alleged that by reason of the proximity of the warehouse to a refining establishment, the warehouse was not a safe place in which to store the flour. On the above pleadings it was held that evidence tending to prove that the defendant owned the property

upon which the refining works were situated, and that such works were of very inflammable nature, etc., was properly excluded. *Standard Milling Co. v. White Line C. T. Co.*, 122 Mo. 258.

Q.

*Warehouse receipts—Issued by warehouseman against his own goods not a “warehouse receipt.”*

A receipt issued by the owner of goods, stored in his own store, is not a warehouse receipt. *Conrad v. Fisher*, 37 Mo. App. 352; *Valley National Bank v. Frank*, 12 Mo. App. 460; *Thorne v. First National Bank*, 37 Oh. St. 254; *Adams v. Merchants' National Bank*, 2 Fed. Rep. 174; *S. C.*, 9 Biss. (U. S.) 396; *Yenni v. McNamee*, 45 N. Y. 614; *Farmers' Bank v. Lang*, 87 N. Y. 209.

*Same—Negotiability—Payable to bearer—Not negotiable.*

Warehouse receipts, made payable to bearer, not transferable by indorsement, are not negotiable as mercantile paper. There must be both a delivery and indorsement to confer upon a warehouse receipt the negotiability of mercantile paper. The transfer of cotton notes or receipts gives to transferee no greater right than he would have acquired by the delivery of the goods themselves. Warehouse receipts or cotton notes represent the cotton itself, and a pledge thereof is as effectual as a pledge of the cotton itself. *Erie & Pacific Despatch v. Compress Co.*, 6 Mo. App. 172; *Fourth National Bank v. St. Louis Cotton Comp. Co.*, 11 Mo. App. 333; *Shaw v. Railroad Co.*, 101 U. S. 557.

*Same—Same—Transfer to assignee of holder not negotiation.*

The owner of certain goods shipped the same to his agent, who sold part of the same and stored the portion sold in the warehouse of the defendant. The warehouseman issued a receipt therefor to the purchaser, which receipt, upon the insolvency of the purchaser, passed to his assignee. In an action brought by the owner for the recovery of the goods, it was held that the receipt, in the hands of the assignee, gave no claim to him as against the owner; that the owner would not be required to recover the receipt, but he could obtain possession of the property, and that the statute in relation to warehouse receipts

was not intended for such a case as this. *Jones et al. v. Evans et al.*, 62 Mo. 375.

*Same—Collateral security.*

A valid pledge of property may be made by the delivery of the bill of sale, copy of gauger's return, and warehouse receipts, for these are symbols of the property itself. *Conrad v. Fisher*, 37 Mo. App. 352.

*Same—Attornment by warehouseman not necessary.*

Attornment by a warehouseman is not required by the laws of Missouri in order to complete a symbolical delivery. In fact, the general rule in this country is that such attornment is not necessary; in Massachusetts it appears that the English doctrine of attornment has been followed. *Id.*

*Same—What constitutes.*

A negotiable warehouse receipt is one given for goods stored or deposited. It must contain an obligation to hold the property, represented thereby, in store. An instrument which is in effect an agreement to ship the goods is not such a receipt. *Union Savings Assn. v. St. Louis Grain Elevator Co.*, 81 Mo. 341; *Same v. Same*, 16 Mo. App. 560.

R.

*Bill of lading—Transfer thereof.*

The transfer of a bill of lading passes the title of the property represented thereby. The holder of such bill holds the legal title to the goods, and is entitled to all the rights of a *bona fide* purchaser for value, and when the consignor transfers the bill of lading for value, he loses his control over the goods, and has no right, therefore, to give directions to the carrier with regard to transportation. *White Live Stock Co. v. Chicago, Milwaukee & St. Paul R. R. Co.*, 87 Mo. App. 330; *Dymock v. Railroad*, 54 Mo. App. 400; *Bank v. Railroad*, 62 Mo. App. 531; *Obert v. Railroad*, 13 Mo. App. 81.

*Same—Receipt and contract—Parol testimony.*

A bill of lading partakes of the nature of a receipt, and of a

contract. So much as partakes of the nature of a receipt may be explained or contradicted by parol testimony. *Steamboat Missouri v. Webb*, 9 Mo. 192.

*Indictment—Theft from warehouse.*

The defendant was indicted for theft from a granary warehouse and building, the same being a building in which divers goods and various things were kept for sale and deposit. It was contended by the defendant that this description did not include a warehouse, the objection being that the word granary, before the word warehouse, was used as an adjective to qualify the following word. It was *held* that this contention could not be sustained. *State v. Watson*, 141 Mo. 338.

**T.**

*Unlawful sale by warehouseman—Requisites of indictment.*

Section 742, R. S. 1889, provides that it shall be unlawful for a warehouseman to sell or permit the removal of goods from his warehouse, without the assent of the holder of the receipt. Therefore, it was *held* that under this section, it must be affirmatively charged, in the indictment against the warehouseman, for the violation of its provisions, that he sold or removed the stored property without the assent of the holder of the receipt therefor. *State v. Kirby*, 115 Mo. 440.

**U.**

*Constitutionality of act relating to warehouse receipts under section 32, article 4, of the constitution of Missouri.*

Section 32, article 4, of the constitution of the state of Missouri declares: "No law enacted by the general assembly shall relate to more than one subject, and that shall be expressed in the title." Defendant was indicted for selling and disposing of grain for which he had not paid, under the section of the act entitled, "An act to prevent the issue of false receipts or bills of lading and to punish fraudulent transfers of property by warehousemen, wharfingers, and others." It was contended, in behalf of the defendant, that as the section in said act provided that any person who shall purchase any goods or other commodity, for cash, and sell, hypothecate, or pledge the same

to another, and use the proceeds thereof for any other purpose than the payment of the purchase price, with intent to cheat or defraud such vendor, shall be guilty of a felony, was unconstitutional and void for the reason that it was not germane to the subject of the act nor included in the title thereof.

The court *held* that an exact and strict compliance with the letter of the constitutional provisions is almost impracticable, and that the nature and object of this act was clearly within its title, for, by a fair construction thereof, it related to a class of defenses of a kindred character, all connected, blended, and germane. *State of Missouri v. Miller*, 45 Mo. 495.

*Erection of warehouse on public ground permitted—Use a public one.*

The city of St. Louis leased to the defendant part of its wharf for the purpose of the erection of a warehouse thereon. The lease could be terminated by the city upon six months' notice to the lessee. The warehouseman served the public by receiving grain from the boats on the Mississippi river. It was contended that the lease to the defendant was void on the ground that it was a use of public property for private purposes. The court *held* that this contention could not be sustained; that as a warehouseman could show no favoritism and was obliged to receive property for storage as long as he had room therefor, the property was clothed with and had attached to it a public trust; further, that, like a railroad or steamboat, the property is private and is operated for private gain, but the use is public. *Belcher Sugar Refining Co. v. St. Louis Grain Elevator Co.*, 101 Mo. 192. Where the city had leased the property to the defendant unconditionally, it was there *held* that such lease was void. See *Belcher Sugar Refining Co. v. St. Louis Grain Elevator Co.*, 82 Mo. 121.

*Charges for storing grain may be regulated by state.*

Where an elevator company is engaged in the business of storing grain, and is doing business in all respects as a public warehouseman, it is engaged in a public trust, is subject to public regulations, and the state may prescribe regulations even as to the charges of storage. *Belcher Sugar Refining Co. v. St.*

*Louis Grain Elevator Co.*, 101 Mo. 192; *Munn v. Illinois*, 69 Ill. 80, aff'd 94 U. S. 113. See also *State ex rel. Star Pub. Co. v. Associated Press*, 159 Mo. 410, in which the doctrine of *Munn v. Illinois* is severely criticised. See also *People v. Budd*, 117 N. Y. 1, aff'd 143 U. S. 517; *North Dakota ex rel. Stoeser v. Brass*, 2 N. D. 482, aff'd 153 U. S. 391. See note to *People v. Budd* in New York decisions, this volume, page 601.

## CHAPTER XXVI.

## MONTANA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Issuing fictitious bills of lading, etc.:**

Every person being the master, owner, or agent of any vessel, or officer or agent of any railroad, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express or transportation company, or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Code of Mont. 1895, sec. 1020.*

**Issuing fictitious warehouse receipts :**

Every person carrying on the business of a warehouseman, wharfinger, or other depositary of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id. sec. 1021.*

**Erroneous bills of lading or receipts issued in good faith:**  
No person can be convicted of any offense under the last two

sections by reason that the contents of any barrel, box, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel, or package, unless it appears that the accused knew such marks, labels, or brands were untrue. *Id.* sec. 1022.

**Duplicate receipts must be marked “duplicate” :**

Every person mentioned in this chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncancelled, without writing across the face of the same the word “duplicate” in a plain and legible manner, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 1023.

**Selling, etc., property received for transportation or storage :**

Every person mentioned in this chapter who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. The provisions of this section do not apply where the property is demanded or sold under process of law. *Id.* sec. 1024.

**Sales of explosives after dark :**

No person or persons shall store, or keep in any store, warehouse, or any other building within the limits of any unincorporated town or village, more than five thousand giant caps at any one time, or any coal oil, kerosene or petroleum, exceeding sixty gallons, other than in original packages, within the limits of the said unincorporated town or village, or shall sell,

lend, barter or dispose of, or deliver or receive the same, or any or either of the said articles or materials, in the section herein enumerated, after dark, by the aid of any lamp, lantern, candle, match or other artificial light, except electric light. *Id.* sec. 718.

## DECISIONS AFFECTING WAREHOUSEMEN.

## R.

*Bill of lading—Transfer of—Statute of frauds.*

The transmission of a bill of lading amounts to the actual delivery of the possession of the property described in it, and is a compliance with the statute of frauds as to the sale and delivery of property. *First Nat. Bank v. McAndrews et al.*, 5 Mont. 325; *Wetzel et al. v. Power et al.*, 5 Mont. 214; *Walsh v. Blakeley*, 6 Mont. 194.

## CHAPTER XXVII.

## NEBRASKA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Description of property :**

Whenever any personal property shall be consigned to, or deposited with, any forwarding merchant, wharf keeper, warehouse keeper, tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, and other personal property, such consignee or bailee shall immediately cause to be entered in a book to be provided and kept by him for that purpose, a description of such property, with the date of the reception thereof. Compiled Statutes, Neb. 1901, see. 5344.

**Notice to owner :**

If such property shall not have been left with such consignee or bailee for the purpose of being forwarded or otherwise disposed of, according to directions received by such consignee or bailee, at or before the time of the reception thereof, and the name and residence of the owner of such property be known or ascertained, the person having such property in his custody shall immediately notify such owner, by letter to be directed to him and deposited in a post-office to be transmitted by mail, of the reception of such property. *Id.* see. 5345.

**Unclaimed property—Sale :**

In case any such property shall remain unclaimed for three months after its reception as aforesaid, the person having possession thereof shall cause a notice to be published once in each week for four successive weeks, in a newspaper published in the same county, if there be one, and if not, then in some paper published at the seat of government, describing such property, and specifying the time when it was received, and stating that unless such property shall be claimed within three months from the first publication of such notice, and the lawful charges there-

on paid, the same will be sold according to the statute in such case made and provided. *Id.* sec. 5346.

**Same—Proceedings before justice :**

In case the owner or persons entitled to such property shall not, within three months after the publication of such notice, claim such property and pay the lawful charges thereon, including the expenses of such publication, the person having possession of the property, his agent, or attorney, may make and deliver to any justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property is known or unknown. *Id.* sec. 5347.

**Same :**

Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall make and annex to such inventory an order under his hand that the property therein described be sold by the sheriff of the county where the same shall be, at public auction, upon due notice. *Id.* sec. 5348.

**Notice :**

It shall be the duty of the sheriff receiving such inventory and order, to give ten days' notice of the sale by posting up written notices thereof in three public places in the county or city, and to sell such property at public auction for the highest price he can obtain therefor. *Id.* sec. 5349.

**Sheriff's return :**

Upon completing the sale, the sheriff making the same shall indorse upon the order aforesaid a return of his proceedings upon such order, and the proceeds of the sale after deducting his fees, which shall be the same as upon an execution. *Id.* sec. 5350.

**Expenses :**

From the proceeds of such sale the justice shall pay the

charges and expenses legally incurred in respect to such property, or a ratable proportion to each claimant if there be not sufficient to pay the whole; and such justice shall ascertain and determine the amount of such charges in a summary manner, and shall be entitled to three dollars for each days' service rendered by him in such proceeding. *Id.* sec. 5351.

#### **Avails—Disposition :**

Such justice shall deliver to the treasurer of the county in which the property was sold, the affidavit, inventory, and order of sale and return hereinbefore mentioned, together with a statement of the charges and expenses incurred in respect to such property as ascertained and paid by him, with a statement of his own fees, and shall at the same time pay over to such treasurer any balance of the proceeds of the sale remaining after payment of such charges, expenses and fees. *Id.* sec. 5352.

#### **Duties of treasurer :**

The treasurer shall file in his office, and safely keep all the papers so delivered to him, and make a proper entry of the payment to him of any moneys arising from such sale in the books of his office. *Id.* sec. 5253.

#### **Money paid to owner :**

If the owner of the property sold, or his legal representatives, shall, at any time within five years after such moneys shall have been deposited in the county treasury, furnish satisfactory evidence of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount deposited with him. *Id.* sec. 5354.

#### **Money paid to school fund :**

If the amount so deposited with any county treasurer shall not be paid to such owner, or his legal representatives, within the said five years, such county treasurer shall pay such amount into the school fund of the proper county, to be appropriated for the support of schools. *Id.* sec. 5355.

#### **Warehouse receipts—Negotiable—Lien :**

Any person, firm or corporation engaged in the business of

packing pork, or beef, or manufacture of distilled spirits, or of linseed oil, or raising chicory roots, or manufacturing chicory, or producing, or owning or handling any product, manufactured article, or merchandise, or any other article or product capable of being stored having a warehouse for the storage of his or its own product; and any person, firm or corporation, being the keeper, proprietor or owner of any elevator, warehouse, crib or tank, wherein is stored any of the products or articles contemplated by this act belonging to such keeper, proprietor or owner, may issue receipts for his or its own property as contemplated by this act, which such persons, firm or corporation has so stored, in the usual form of warehouse receipts which shall have the same force and effect as the receipts issued by the keeper of a public warehouse to parties having property so stored therein, which receipt shall be negotiable by indorsement and entitle the *bona fide* holder thereof, advancing money on the credit of the same, to a lien upon the property so stored and described therein for the money so advanced as to all subsequent purchasers and creditors of any person interested therein, from the date of issuance of such receipts and the advance of the money. *Id.* sec. 5356.

#### **Same—Fraudulent—Penalty :**

If any person, or any individual or officer of any firm or corporation described in the preceding section, shall execute and deliver or cause to be executed and delivered to any person, firm or corporation, false, fraudulent or fictitious warehouse receipts, acknowledgments or other instruments in writing to the effect that the person, firm or corporation so issuing same has in store in a warehouse, elevator, cribs, tanks, or bins, any of the products or articles contemplated by this act, when in fact said article is not so stored according to the tenor and effect of said receipt, acknowledgment or writing; and if, having issued such receipt thereon as in the preceding section provided, such person, individual or officer of any firm or corporation shall sell, inumber, ship, transfer, or in any manner remove beyond his or its immediate control the property described in such receipt without first having discharged the lien by said section thirteen (13) sec. [5356] provided without the

written consent of the holder of said receipt, with the intent to deceive, defraud, or injure any person, firm, or corporation whomsoever, or if any such person, individual or officer of any firm or corporation shall indorse, assign, transfer or deliver to any other person, firm or corporation any such false or fraudulent receipt, acknowledgment or instrument in writing, knowing the same to be false, fraudulent or fictitious with like intent, such person, individual or officer of such firm or corporation shall be adjudged guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars (\$1,000), and imprisonment in the penitentiary of this state not exceeding three years. *Id.* sec. 5357.

**Elevators and storehouses declared public warehouses :**

That all elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses. *Id.* sec. 5358.

**Required to make weekly statements :**

The owner, lessee or manager of each and every public warehouse shall make weekly statements under oath, on or before each Tuesday up to the close of business of the previous Saturday, before some officer designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such other place or places designated by law, which statement shall correctly set forth the amount of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued and are at the time of taking such statement, outstanding therefor, and in cities of the metropolitan or first class, the owner, lessee, or manager of each public warehouse situated therein shall, in addition to the above, note such daily changes on the copy posted in the warehouse as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior lots without the consent of the owner or consignee thereof. *Id.* sec. 5359.

**Owners at liberty to examine property and books :**

The owner or owners of property stored in any warehouse, or holder of a receipt for the same, shall always be at liberty to examine such property stored and all the books and records of the warehouse in regard to such property. *Id.* sec. 5360.

**Warehouses classified :**

All public warehouses as herein defined shall be divided into three classes, to be designated as A, B and C, respectively, and they shall receive, ship, store and handle the property of all alike without discrimination. This does not apply to property extra hazardous. *Id.* sec. 5361.

**Classes defined :**

Public warehouses of Class A shall embrace all warehouses, elevators and granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved, such warehouses, elevators or granaries being located in the cities of the metropolitan or first class. Public warehouses of Class B shall embrace all other warehouses, elevators, or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together. Public warehouses of Class C shall embrace all other warehouses or places where property of any kind is stored for a consideration. *Id.* sec. 5362.

**License :**

The proprietor, lessee or manager of any public warehouse shall be required before transacting any business in such warehouse, to procure from the board of transportation a license permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by the board of transportation upon a written application which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same; or, if the warehouse be owned or managed by a corporation, the name of the president, secretary and treasurer of

such corporation shall be stated, and the said license shall give authority to carry on and conduct the business of a public warehouse in accordance with the laws of this state and shall be revocable by the said board of transportation upon complaint of any person in writing, setting forth the particular violation of law, and upon satisfactory proof, to be taken in such manner as may be directed by the said board of transportation. *Id.* sec. 5363.

**Bond :**

The person receiving a license as herein provided shall file with the said board of transportation a bond to the people of the said state of Nebraska, with good and sufficient security, to be approved by said board of transportation, in the penal sum of ten thousand dollars (\$10,000), conditioned for the faithful performance of his duty as public warehouseman, and his full and unreserved compliance with all laws of this state in relation thereto. *Id.* sec. 5364.

**Penalty for doing business without a license :**

Any person who shall transact the business of a public warehouse without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been revoked (save only that he may be permitted to deliver property previously stored in such warehouse) shall on conviction be fined in a sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each and every day such business is carried on, and the said board of transportation may refuse to renew any license or to grant a new one to any of the persons whose license has been revoked within one year from the time it was revoked. *Id.* sec. 5365.

**Not to discriminate—Not to mix grain—Receipts :**

It shall be the duty of any warehouseman of Classes A and B to receive for storage or shipment any grain that may be tendered to him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between persons desiring to avail themselves of warehouse facilities, and in the

case of every warehouseman of Class A such grain in all cases shall be inspected and guarded by a duly authorized inspector, and stored with grain of a similar grade received at the same time as near as may be. In no case shall grain of different grades be mixed together in warehouses of Class A while in store, but if the owner or consignee so requests and the warehouseman consent thereto, his grain of the same grade may be kept in a bin by itself apart from that of the owners, which bin shall thereupon be marked and known as a "separate bin." If a warehouse receipt be issued for grain so kept separate, it shall state on its face that it is in a separate bin, and shall state the number of such bin, and no grain shall be delivered from such warehouse of Class A unless it be inspected on the delivery thereof by a duly authorized inspector of grain. Nothing in this section shall be so construed as to require the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where such warehouses are necessarily closed. *Id.* sec. 5366.

#### **Manner of issuing receipts—Class A :**

Upon application of the owner or consignee of grain stored in a public warehouse of Class A, the same being accompanied with evidence that all transportation or other charges which may be a lien upon such grain, including charges for inspection have been paid, the warehousemen shall issue to the person entitled thereto a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store, to be stored with grain of the same grade by inspection, received at about the date of the receipt, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued and the payment of proper charges for storage. All warehouse receipts for grain issued from the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the

same date and number as the original and shall be plainly marked on its face "duplicate." If the grain was received from railroad cars the number of each car shall be stated upon the receipt with the amount it contained; if from canal-boat, barge or other vessel the name and number of such craft; if from teams or by other means the manner of its receipt shall be stated on its face. The number of the bin shall also be written on the face of the receipt when desired by the owner or consignee. *Id.* sec. 5367.

### **Cancelling receipts :**

Upon the delivery of grain or other property from store, upon any receipt, such receipt shall be plainly marked across its face with the word "cancelled," with the name of the person cancelling the same, and shall thereafter be void, and shall not again be put in circulation, nor shall grain or other property be delivered twice upon the same receipt. *Id.* sec. 5368.

### **Further, of issuing and cancelling receipts :**

No warehouse receipt shall be issued except upon the actual delivery of grain or other property into store in the warehouse from which it purports to be issued and which is to be represented by the receipt, nor shall any receipt be issued for a greater quantity of grain or other property than was contained in the lot or parcel stated to have been received, nor shall more than one receipt be issued for the same lot of grain or other property except in cases where receipts for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain or other property represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder, but such new receipt shall bear the same date as the original, and shall state on its face that it is balance of receipt of the original number, and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consent thereto, the original receipt shall be cancelled the same as if

the grain or other property had been delivered from store, and the new receipts shall express on their face that they are parts of other receipts or a consolidation of other receipts, as the case may be, and the number of the original receipts shall also appear upon the new ones issued as explanatory of the change, but no consolidation of receipts of dates differing more than ten days shall be permitted, and all new receipts issued for old ones cancelled as herein provided, shall bear the same dates as those originally issued as near as may be. *Id.* sec. 5369.

#### **Warehouse not to limit liability :**

No warehouseman in this state shall insert in any receipt issued by him any language in anywise limiting or modifying his liabilities or responsibilities as imposed by the laws of this state. *Id.* sec. 5370.

#### **Delivery of property :**

On the return of any warehouse receipt issued by him properly indorsed and the tender of all proper charges upon the property represented by it, such property shall be delivered to the holder of such receipt in the order demanded and as rapidly as due diligence, care and prudence will justify. Unless the property represented by such receipt shall be promptly delivered as above, after such demand shall have been made, the warehouseman in default shall be liable to the owner of such receipt for damages for such default ten per cent of the value of the property at the time of the demand, and in addition thereto one per cent of the value of the property for each and every day of such neglect or refusal to deliver. *Id.* sec. 5371.

#### **Posting grain in store—Statements to registrar—Daily publication—Cancelled receipts—Class A :**

The warehouseman of every public warehouse of Class A shall on or before Tuesday morning of each week cause to be made out and shall keep posted in the business office of his warehouse, in a conspicuous place, a statement of the amount of each kind and grade of grain in store in his warehouse at the close of business on the previous Saturday, and shall also on each Tuesday morning render a similar statement made under

oath before some officer authorized by law to administer oaths, by one of the principal owners or operators thereof or by the bookkeeper thereof having personal knowledge of the facts to the warehouse registrar appointed as hereinafter provided. They shall also be required to furnish daily to the same registrar a correct statement of the amount of each kind and grade of grain received in store in such warehouse on the previous day; also the amount of each kind and grade of grain delivered or shipped by such warehouseman during the previous day and what warehouse receipts have been cancelled upon which the grain has been delivered on such day, giving the number of each receipt and amount, kind and grade of grain received and shipped upon each; also how much grain, if any, was so delivered or shipped and the kind and grade of it, for which warehouse receipts had not been issued and when and how much unreceipted grain was received by them, the aggregate of such reported cancellations and delivery of unreceipted grain corresponding in amount, kind and grade with the amount so reported delivered or shipped. They shall also at the same time report what receipts, if any, have been cancelled and new ones issued in their stead, as herein provided for. And the warehouseman making such statements shall in addition furnish the said registrar any further information regarding receipts issued or cancelled that may be necessary to enable him to keep a full and correct record of all receipts issued and cancelled and of grain received and delivered. *Id.* sec. 5372.

#### **Chief inspector :**

It shall be the duty of the governor to appoint by and with the advice and consent of the senate, a suitable person, who shall not be a member of any board of trade, and who shall not be interested directly or indirectly in any warehouse in this state, a chief inspector of grain, who shall hold his office for the term of two years, unless sooner removed as hereinafter provided for, in every city or county in which is located a warehouse of Class A or B, provided that no such grain inspector for cities or counties in which are located warehouses of Class B shall be appointed, except upon the application and petition of two or more warehouses of Class B doing business in such city or county,

and when there shall be a legally organized board of trade in such cities or counties such application and petition shall be officially indorsed by such board of trade before such application and petition shall be granted. *Id.* sec. 5373.

**His duties :**

It shall be the duty of such chief inspector of grain to have a general supervision of the inspection of grain as required by this act or the laws of this state, under the advice and immediate direction of the board of transportation. *Id.* sec. 5374.

**Assistant inspectors :**

The said chief inspector shall be authorized to nominate to the said board of transportation such suitable persons, in sufficient number, as may be deemed qualified for assistant inspectors, who shall not be members of any board of trade nor interested in any warehouse, and also such other employees as may be necessary to properly conduct the business of his office, and the board of transportation is authorized to make such appointments. *Id.* sec. 5375.

**Chief inspector's oath and bond :**

The chief inspector shall, upon entering the duties of his office, be required to take an oath, as in case of other officers, and he shall execute a bond to the people of the state of Nebraska in the penal sum of fifty thousand (50,000) dollars when appointed for any city in which is located a warehouse of Class A and ten thousand (10,000) dollars when appointed for any other city or county, with sureties to be approved by the board of transportation, with a condition therein that he will faithfully and strictly discharge the duties of his said office of inspector according to law and the rules and regulations prescribing his duties, and that he will pay all damages to any person or persons who may be injured by his neglect, refusal or failure to comply with law and the rules and regulations aforesaid. *Id.* sec. 5376.

**Assistant inspector's oath and bond :**

And each assistant inspector shall take a like oath, execute a bond in the penal sum of five thousand (5,000) dollars with like

conditions and to be approved in like manner as is provided in case of the chief inspector, which said several bonds shall be filed in the office of said board of transportation, and suit may be brought upon said bond or bonds in any court having jurisdiction thereof, in the county where the plaintiff or defendant resides, for the use of the person or persons injured.' *Id.* sec. 5377.

#### **Rules for inspection charges :**

The chief inspector of grain and all assistant inspectors of grain and other employees in connection therewith shall be governed in their respective duties by such rules and regulations as may be prescribed by said board of transportation, and the said board of transportation shall have full power to make all rules and regulations for the inspection of grain, and shall also have power to fix the rate of charges for the inspection of grain, and the manner in which the same shall be collected, which charges shall be regulated in such a manner as will in the judgment of the said board of transportation produce sufficient revenue to meet the necessary expenses of the service of inspection and no more. *Id.* sec. 5378.

#### **Pay of inspectors and assistants :**

It shall be the duty of the said board of transportation to fix the amount of the compensation to be paid to the chief inspector, assistant inspectors and all other persons employed in the inspection service, and prescribe the time and manner of their payment. *Id.* sec. 5379.

#### **Appointment of registrar and assistants :**

The said board of transportation are hereby authorized to appoint a suitable person as warehouse registrar and such assistants as may be deemed necessary to perform the duties imposed upon such registrar by the provisions of this act. *Id.* sec. 5380.

#### **General supervision, pay, etc. :**

The said board of transportation shall have and exercise a general supervision and control of such appointments, shall prescribe their respective duties, shall fix the amount of their

compensation and the time and manner of its payment. *Id.* sec. 5381.

#### **Removal from office :**

Upon the complaint in writing of any person to the said board of transportation, supported by reasonable and satisfactory proof, that any person appointed or employed under the provisions of this section has violated any of the rules prescribed for his government, has been guilty of an improper act or has been found insufficient or incompetent for the duties of his position, such person shall be immediately removed from his office or employment by the same authority that appointed him and his place shall be filled if necessary, by a new appointment, or in case it shall be deemed necessary to reduce the number of persons so appointed or employed, their term of service shall cease under the orders of the same authority by which they were appointed or employed. *Id.* sec. 5382.

#### **Expenses—How paid :**

All necessary expenses incident to the inspection of grain and to the office of registrar economically administered, including the rent of suitable offices, shall be deemed expenses of the inspection service, and shall be included in the estimate of expenses of such inspection service, and shall be paid from the funds collected for the same. *Id.* sec. 5383.

#### **Rates of storage :**

Every warehouseman of public warehouses of Class A shall be required during the first week in January of each year to publish in one or more of the newspapers, daily, if there be such published in the city in which warehouse is situated, a table or schedule of rates for the storage of grain in his warehouse during the ensuing year, which shall not be increased, except as is hereinafter provided during the year, and such published rates, or any published reduction of them shall apply to all grain received into such warehouse from any person or source, and no discrimination shall be made directly or indirectly for or against any charges made by such warehouseman for the storage of grain. The maximum charge for storage and handling of grain,

including the cost of receiving and delivering, shall be for the first ten days or part thereof. *Id.* see, 5384. (See note.)

### Weighing:

All grain shall be weighed on receipt and delivery from the public warehouse of Class A and B, and annually on the date prescribed by the board of transportation all grain in bulk stored in said public warehouse shall be weighed according to its kind and grade and reported to the register. *Id.* see, 5385.

### Loss by fire—Heating—Order of delivery—Grain out of condition:

No public warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same, nor shall he be held liable for damage to grain by heating if it can be shown that he has exercised proper care in handling and storing the same, and that such heating or damage was the result of causes beyond his control, and in order that no injustice may result to the holder of grain in any public warehouse of Classes A and B it shall be deemed the duty of such warehouseman to dispose of by delivery or shipping in the ordinary and legal manner of so delivering that grain of any particular grade which was first received by them or which has been the longest time in store in his warehouse, and unless public notice has been given that some portion of the grain in his warehouse is out of condition or becoming so, such warehouseman shall deliver grain of quality equal to that received by him on all receipts as presented. In case, however, any warehouseman of Classes A and B shall discover that any portion of the grain in his warehouse is out of condition or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice by advertisement in a daily newspaper in which warehouse is situated [so in act] and by posting a notice in the most public place for such a purpose in such city, of its actual condition as near as he can ascertain it, shall state in such notice the kind and grade of the grain and the bins in which it is stored, and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the num-

bers, amounts and dates of each, which receipts shall be those of the oldest dates then in circulation or uncancelled, the grain represented by which has not previously been declared or received for as out of condition, or if the grain longest in store has not been received for he shall so state and shall give the name of the party for whom such grain was stored, the date it was received and the amount of it and the enumeration of receipts and identification of grain so discredited shall embrace, as near as may be, as great a quantity of grain as is contained in such bins, and such grain shall be delivered upon the return and cancellation of the receipts and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after publication of its condition, but such grain shall be kept separate and apart from all direct contact with other grains and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act or neglect, the effect of which is to depreciate property stored in the warehouse under his control, shall be held responsible as at common law, or upon the bond of such warehouseman, and in addition thereto the license of such warehouseman shall be revoked. Nothing in this section shall be so construed as to permit any warehouseman to deliver any grain stored in a special bin or by itself, as provided in this act, to any but the owner of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition, as herein provided for, shall not be removed from store by the owner thereof within one month from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction for the account of said owner by giving ten days' notice by advertisement in a daily newspaper, if there be such published in the city or town where such warehouse is located. *Id.* see. 5386.

**Tampering with stored grain—Private business—Drying  
—Cleaning—Moving :**

It shall not be lawful for any public warehouseman to mix

any grain of different grades together or to select different qualities of the same grade for the purpose of storing or delivering the same, nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain while in his possession or custody, with a view of securing any profit to himself or any other person, and in no case even of grain stored in a separate bin, shall he be permitted to mix grain of different grades together while in store. He may, however, on request of the owner of any grain stored in a private bin, be permitted to dry, clean, or otherwise improve the condition or value of any such lot of grain, but in such case it shall only be delivered as such separate lot or as the grade it was originally when received by him, without reference to the grade it may be as improved by such process of drying or cleaning. Nothing in this section, however, shall prevent any warehouseman from moving grain while within his warehouse for its preservation or safe-keeping. *Id.* sec. 5387.

#### **Examination of grain and scales—Incorrect scales :**

All persons owning property or who may be interested in the same in any public warehouse and all duly authorized inspectors of such property shall at all times during ordinary business hours be at full liberty to examine any and all property stored in any public warehouse in this state, and all proper facilities shall be extended to such person by the warehouseman, his agent and his servants for an examination, and all parts of public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or of any authorized inspector of such property; and all scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized inspector or sealer of weights and measures at any time when required by any person or persons, agents or agents, whose property has been or is to be weighed on such scales, the expense of such tests by an inspector or sealer to be paid by the warehouse proprietor if the scales are found incorrect, but not otherwise. Any warehouseman who may be guilty of continuing to use scales found to be in an imperfect or incorrect condition, by such examination and test, until the same shall have been pronounced cor-

rect and properly sealed, shall be liable to be proceeded against as hereinafter provided. *Id.* sec. 5388.

#### **Grain must be inspected:**

In all places where there is legally appointed an inspector of grain, no proprietor or manager of a public warehouse of Class A and B shall be permitted to receive any grain and mix the same with the grain of other owners in the storage thereof until the same shall have been inspected and graded by said inspector. *Id.* sec. 5389.

#### **Bogus inspector—Penalty:**

Any person who shall assume to act as an inspector of grain who has not been legally appointed and sworn, shall be *held* to be an imposter, and shall be punished by a fine of not less than one hundred (100) dollars nor more than two hundred (200) dollars for each and every attempt to so inspect grain to be recovered before a justice of the peace. *Id.* sec. 5390.

#### **Misconduct of inspector—Influencing—Penalty:**

Any duly authorized inspector of grain who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty as such inspector of grain and any person who shall improperly influence any inspector of grain in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) in the discretion of the court, or shall be imprisoned in the county jail not less than three nor more than twelve months, or both, in the discretion of the court. *Id.* sec. 5391.

#### **Owner, etc., dissatisfied with inspection—His rights—Delivery on track:**

In case any owner or consignee of grain shall be dissatisfied with the inspection of any lot of grain, or shall from any cause desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into any public warehouse (whether the property may have been pre-

viously consigned to such warehouse or not), by giving notice to the person or corporation in whose possession it may be at the time of giving such notice, and such grain shall be withheld from going into store and be delivered to him, subject only to such proper charges as may be a lien upon it prior to such notice. The grain, if in railroad cars to be removed therefrom by such owner or consignee within twenty-four hours after such notice has been given to the railroad company having it in possession, *provided*, such railroad company place the same in a proper and convenient place for unloading, and any person or corporation refusing to allow such owner or consignee to so receive his grain or other property in carloads shall be deemed guilty of conversion and shall be liable to pay such owner or consignee, double the value of the property so converted. Notice that such grain or other property is not to be delivered into store may also be given to the proprietor or manager of any warehouse into which it would otherwise have been delivered, and if after such notice it be taken into store in such warehouse, the proprietor or manager of such warehouse shall be liable to the owner for double its market value. *Id.* sec. 5392.

#### **Combination :**

It shall be unlawful for any proprietor, lessee or manager of any public warehouse to enter into any contract, agreement, understanding or combination with any railroad company or other corporation, or with any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage or any other purpose contrary to the direction of the owner, his agent or consignee. Any violation of this section shall subject the offender to be proceeded against as provided in the next section of this act. *Id.* sec. 5393.

#### **Suits—Against warehouseman :**

If any warehouseman shall be deemed guilty of a violation of any of the provisions of this act it shall be lawful for any person injured by such violation to bring suit in any court of competent jurisdiction upon the bond of such warehouseman in the name of the people of the state of Nebraska to the use of such person. In all criminal prosecutions against a warehouseman

for the violation of any of the provisions of this act it shall be the duty of the prosecuting attorney of the county in which said prosecution is brought to prosecute the same to a final issue, in the name of and on behalf of the people of the state of Nebraska. *Id.* sec. 5394.

#### **Warehouse receipts negotiable :**

Warehouse receipts for property stored in any class of public warehouses as herein described shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another. All warehouse receipts for property stored in public warehouses of Class C shall distinctly state on their face the brand or distinguishing marks upon such property. *Id.* sec. 5395.

#### **False receipts—Fraudulent removal—Penalty :**

Any warehouseman of any public warehouse who shall be guilty of issuing any warehouse receipt for any property not actually in store at the time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or inspected grade of such property, or who shall remove any property from store except to preserve it from fire or other sudden danger, without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall, when convicted thereof, be deemed guilty of a crime, and shall suffer, in addition to any other penalties prescribed by this act, imprisonment in the penitentiary for not less than one and not more than ten years. *Id.* sec. 5396.

#### **Common-law remedy saved :**

Nothing in this act shall deprive any person of any common-law remedy now existing. *Id.* sec. 5397.

#### **Printed copy of act posted :**

All proprietors and managers of public warehouses shall keep posted up at all times in a conspicuous place in their business

offices and in each of their warehouses a printed copy of this act. *Id.* sec. 5398.

**Duty of board of transportation—Enforcement of act :**

It shall be the duty of the board of transportation to see that the provisions of this act are duly enforced. *Id.* sec. 5399.

**Defining additional duties of the board of transportation in counties with public warehouses—Additional duties of the board of transportation :**

In addition to their present duties the board of transportation shall examine into the condition and management and all other matters concerning the business of public warehouses in this state, so far as the same pertain to the relation of such warehouses to the public and to the accommodation and security of persons doing business therewith, and whether such warehouses, their officers, directors, managers, lessees, agents and employees comply with the laws of this state now in force or which shall hereafter be in force concerning them. And whenever it shall come to their knowledge, either upon complaint or otherwise, or they shall have reason to believe that any such law or laws have been or are being violated, they shall prosecute or cause to be prosecuted all such corporations or persons guilty of such violation. In order to enable said board of transportation to efficiently perform their duties under this act, it is hereby made their duty to cause one of their number at least once in six months to visit each county in the state in which is or shall be located a public warehouse and personally inquire into the management of such warehouse business. *Id.* sec. 5400.

**Statement of public warehousemen :**

It shall be the duty of every owner, lessee and manager of every public warehouse in this state to furnish in writing, under oath, at such times as said board of transportation shall require and prescribe, a statement concerning the condition and management of his business as such warehouseman. *Id.* sec. 5401.

**Cancellation of warehouse licenses :**

Said board of transportation are hereby authorized to hear

and determine all applications for the cancellation of warehouse licenses in this state, which may be issued in pursuance of any laws of this state and for that purpose to make and adopt such rules and regulations concerning such hearing and determination as may from time to time by them be deemed proper. And if, upon such hearing, it shall appear that any public warehouseman has been guilty of violating any law of this state concerning the business of public warehousemen, said commissioners may cancel and revoke the license of said public warehousemen, and immediately notify the officer who issued such license of such revocation and cancellation, and no person whose license as a public warehouseman shall be cancelled or revoked shall be entitled to another license or to carry on the business in this state of such public warehouseman until the expiration of not less than six months from the date of such revocation and cancellation, and until he shall have again been licensed; *Provided*, That this section shall not be construed as to prevent any such warehouseman from delivering any grain or other property on hand at the time of such revocation or cancellation of his said license; and all licenses issued in violation of the provisions of this section shall be deemed null and void. *Id.* sec. 5402.

#### **Power to examine books, etc.:**

The property, books, records, accounts, papers and proceedings of all such public warehousemen shall at all times, during business hours, be subject to the examination and inspection of the said board of transportation, and they shall have power to examine under oath or affirmation any and all owners, managers, lessees, agents and employees of such public warehouses and other persons concerning any matter relating to the condition and management of such business. *Id.* sec. 5403.

#### **May examine witness, etc. :**

In making any examinations as contemplated in this act or for the purpose of obtaining information pursuant to this act, said board of transportation shall have the power to issue subpoenas for the attendance of witness and may administer oaths. In case any person shall willfully fail or refuse to obey said subpoena, it shall be the duty of the county court of any county

upon application of said board of transportation to issue an attachment for such witness, and compel such witness to attend before the said board of transportation, and give his testimony upon such matters as shall be lawfully required by the said board of transportation, and the said court shall have power to punish for contempt as in other cases of refusal to obey the process and order of such court. *Id.* sec. 5404.

**Penalty against witness :**

Any person who shall willfully neglect or refuse to obey the process of subpoena issued by said board of transportation and appear and testify as therein required shall be guilty of a misdemeanor and shall be liable to an indictment in any court of competent jurisdiction, and on conviction thereof shall be punished for each offense by a fine of not less than twenty-five (25) dollars, nor more than five hundred (500) dollars, or by imprisonment of not more than thirty days, or both, in the discretion of the court before which such conviction shall be had. *Id.* sec. 5405.

**Penalty against public warehousemen, etc. :**

Every railroad corporation and every owner, lessee, manager or employee of any public warehouse who shall willfully neglect to make and furnish any report required in this act at the time herein required, or who shall willfully and unlawfully hinder, delay or obstruct said board of transportation in the discharge of the duties hereby imposed upon them shall forfeit and pay a sum of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense, to be recovered in an action of debt in the name and for the use of the people of the state of Nebraska. *Id.* sec. 5406.

**Attorney general and county attorney to prosecute suits :**

It shall be the duty of the attorney general and the county attorney in every district and county on the request of said board of transportation to institute and prosecute any and all suits and proceedings which they or any of them shall be directed by said board of transportation to institute and prosecute for a violation of this act or any law of this state concern-

ing public warehouses or the officers, employees, owners, operators, or agents of any such public warehouse. *Id.* sec. 5407.

**Same—In name of people :**

All such prosecutions shall be in the name of the people of the state of Nebraska, and all moneys arising therefrom shall be paid into the state treasury by the sheriff or other officer collecting the same. No suits commenced by said board of transportation shall be dismissed except said board shall consent thereto. *Id.* sec. 5408.

**Right of individuals saved :**

This act shall not be so construed as to waive or affect the right of any person injured by the violation of any law in regard to public warehouses from prosecuting for his private damages in any manner allowed by law. *Id.* sec. 5409.

**Board of transportation to establish grades :**

Within thirty days after this act becomes a law the said board of transportation shall establish a proper number and standard of grades for the inspection of grain and may alter or change the same from time to time: *Provided*, no modification or change of grades shall be made, or any new ones established, without public notice being given of such contemplated change, for at least thirty days prior thereto, by publication in one or more daily newspapers printed in each city containing warehouses of Class A, and, *provided further*, that no mixture of old and new grades, even though designated by the same names or distinction, shall be permitted while in store. *Id.* sec. 5410.

**Committee of appeals :**

Within twenty days after this act takes effect the said board of transportation shall appoint three discreet and competent persons to act as a committee of appeals in every city wherein is located a public warehouse of Class A, who shall hold their office for one year, and until their successors are appointed. And every year thereafter a like committee shall be appointed by the said board of transportation, who shall hold their office for one year and until their successors are appointed: *Provided*, said board of transportation shall have in their discretion to

remove from office any member of said committee at any time, and fill vacancies thus created by the appointment of other discreet persons. *Id.* sec. 5411.

#### **Appeals—Notices :**

In all matters involving doubt on the part of the chief inspector or any assistant inspector as to the proper inspection of any lot of grain or in case any owner, consignee or shipper of grain, or any warehouse manager shall be dissatisfied with the decision of the chief inspector or any assistant inspector, an appeal may be made to said committee of appeal and the decision of a majority of said committee shall be final. Said board of transportation are authorized to make all necessary rules governing the manner of appeals as herein provided. And all complaints in regard to the inspection of grain and all notices requiring the services of the committee of appeal may be served on said committee or may be filed with the warehouse registrar of said city, who shall immediately notify said committee of the fact and who shall furnish said committee with such clerical assistance as may be necessary for the proper discharge of their duties. It shall be the duty of said committee on receiving such notice to immediately act on and render a decision in each case. *Id.* sec. 5412.

#### **Committee on appeals—Oath—Bond—Who may serve on :**

The said committee on appeals shall, before entering upon the duties of their office, take an oath as in the case of other inspectors of grain, and shall execute a bond in the penal sum of five thousand dollars (\$5,000) with like conditions as is provided in the case of other inspectors of grain, which said bond shall be subject to the approval of the said board of transportation. It is further provided that the salaries of said committee on appeals shall be fixed by the said board of transportation and be paid from the inspection fund, or by the party taking the appeal, under such rules as the board of transportation shall prescribe, and all necessary expenses incurred in carrying out the provisions of this act, except as herein otherwise provided, shall be paid out of the fund collected for the inspection service upon the order of the said board of transportation on the state

treasurer: *Provided*, that no person shall be appointed to serve on the committee of appeal who is a purchaser of or a receiver of grain or other articles to be passed upon by said committee. *Id.* sec. 5413.

#### **Registered for collection—Inspection fees :**

No grain shall be delivered from store from any public warehouse of Class A for which or representing which warehouse receipts shall have been issued, except upon the return of such receipts stamped or otherwise plainly marked by the warehouse registrar with the words "Registered for collection," and the date thereof, and said board of transportation shall have power to fix the rates of charges for the inspection of grain both into and out of the public warehouse, which charges shall be a lien upon all grain so inspected, as may be collected of the owner, receiver or shipper of such grain, in such manner as the said board of transportation may prescribe. *Id.* sec. 5414.

#### **Deposit of inspection fund :**

All money collected for the inspection fund shall be deposited with the state treasurer, who shall be liable under his official bond for the proper care of same, and no payment shall be made therefrom except by order of the said board of transportation as they may prescribe. *Id.* sec. 5415.

#### **Weighmaster, appointment of assistants :**

That there shall be appointed by the state board of transportation in all cities where there is state inspection of grain, a state weighmaster, and such assistants as shall be necessary. *Id.* sec. 5416.

#### **Duties :**

Said state weighmaster and assistants shall, at the place aforesaid, supervise and have exclusive control of the weighing of grain and other property which may be subject to inspection, and the inspection of scales and the action and certificate of such weighmaster and assistants in the discharge of their aforesaid duties shall be conclusive upon all parties in interest. *Id.* sec. 5417.

**Fix fees :**

The said board of transportation shall fix the fees to be paid for the weighing of grain or other property, which fees shall be paid equally by all parties interested in the purchase and sale of the property weighed, on scales inspected and tested. *Id.* sec. 5418.

**Weighmaster—Qualifications—Bond—Compensation :**

Said state weighmaster and assistants shall not be a member of any board of trade or association of like character. They shall give bonds in the sum of five thousand (5,000) dollars conditioned for the faithful discharge of their duties, and shall receive such compensation as the board of railroad and warehouse commissioners shall determine. *Id.* sec. 5419.

**May adopt rules :**

The said board of transportation shall adopt such rules and regulations for the weighing of grain or other property as they shall deem proper. *Id.* sec. 5420.

**Neglect of duty—Penalty :**

In case any person, warehouseman or railroad corporation or any of their agents or employees shall refuse or prevent the aforesaid state weighmaster or either of his assistants from having access to their scales, in the regular performance of their duties, in supervising the weighing of any grain or other property in accordance with the tenor and meaning of this act, they shall forfeit the sum of one hundred (100) dollars for each and every offense, to be recovered in an action of debt before any justice of the peace in the name of the people of the state of Nebraska, such penalty or forfeiture to be paid to the county in which the suit is brought, and shall also be required to pay all cost of prosecution.

**Repeal :**

All existing acts inconsistent with this act are hereby repealed. *Id.* sec. 5421.

**Fraudulent appropriation of merchandise by agent :**

Every factor or agent who shall deposit any merchandise

intrusted or consigned to him, or any document so possessed or intrusted aforesaid, as a security for any money borrowed, or negotiable instrument received by such factor or agent, and shall apply or dispose of the same to his own use, contrary to good faith, and with intent to defraud the true owner, and every factor or agent who shall sell any merchandise or other property intrusted or consigned to him, in the like manner, and with the like fraudulent intent, and every other person who shall knowingly connive with, or aid, or assist any such factor or agent in any such fraudulent deposit or sale, shall be imprisoned in the penitentiary not exceeding three years nor less than one year. *Id.* sec. 7693.

#### **Frauds by consignors :**

If the owner of any merchandise, or other person in whose name any merchandise shall be shipped or delivered to the keeper of any warehouse, or other factor or agent, to be shipped, shall, after the advancement to him or them of any money, or the giving to him or them of any negotiable security, by the consignee or consignees of such merchandise, without the consent of such consignee or consignees being therefor first had and obtained, make any disposition of such merchandise, different from, and inconsistent with that agreed upon between such owner or other person aforesaid, and such consignee or consignees, at the time of said money being so advanced, or said negotiable security being so given, with the intent to defraud or injure such consignee or consignees, said owner or other person aforesaid, and all other persons conniving with him or them for the purpose of deceiving, defrauding, or injuring said consignees shall be imprisoned in the penitentiary not more than three years nor less than one year: *Provided, however,* That no person shall be subject to prosecution under this section, who shall, before disposing of such merchandise, pay, or offer to pay to the consignee or consignees the full amount of any advancement made thereon. *Id.* sec. 7694.

#### **False bills of lading and receipts :**

If any person shall execute and deliver, or shall cause, or pro-

cure to be executed and delivered to any person, any false or fictitious bill of lading, receipt, schedule, invoice, or other written instrument, to the purport or effect that any goods, wares, merchandise, live stock or other property usually transported by carriers, had been or were held, delivered, received, placed, or deposited on board of any steamboat, or water craft, navigating the waters in or bordering upon the state of Nebraska, or at the freight office, depot, station, or other place designated or used by any railroad company or other common carrier, for the reception of any such property so usually transported by carriers, when such goods, wares, merchandise, live stock, or other property were not held, or had not in fact and good faith been delivered, received, or deposited on board of such steamboat, or other water craft, or at such freight office, depot, station, or other place so designated or used by any common carrier for the reception of such property, when such bill of lading, receipt, invoice, schedule, or other written instrument was made and delivered, according to the purport and effect of such bill of lading, receipt, invoice, schedule, or other written instrument with intent to deceive, defraud, or injure any person or corporation, or if any person shall indorse, assign, transfer, or put off or attempt to indorse, assign, transfer, or put off any such false or fictitious bill of lading, receipt, invoice, schedule, or other written instrument, knowing the same to be false, fraudulent, or fictitious, the person offending shall be imprisoned in the penitentiary not exceeding four years nor less than one year.  
*Id.* sec. 7695.

**Same :**

If any person shall execute and deliver, or shall cause or procure to be executed and delivered to any other person, any false and fictitious warehouse receipt, acknowledgment, or other instrument of writing, to the purport and effect that such person, or any other person or persons, copartnership, firm, body politic or corporate, which he or she represents, or pretends to represent, held or had received in store, or held or had received in any warehouse, or in any other place, or held or had received into possession, custody, or control, of such person or persons,

copartnership, firm, or body politic, any goods, or wares, or merchandise, when such goods, wares, or merchandise were not held and had not been received in good faith, according to the purport and effect of such warehouse receipt, acknowledgment or instrument of writing, with intent to defraud, deceive, or injure any person whomsoever, or if any person shall indorse, assign, transfer or deliver, or shall attempt to indorse, transfer and deliver, to any other person any such false and fictitious warehouse receipt, acknowledgment, or instrument of writing, knowing the same to be false, fraudulent, or fictitious, such person shall be punished by imprisonment in the penitentiary not more than three years nor less than one year. *Id.* sec. 7696.

**Frauds of parties having possession of merchandise by virtue of warehouse receipts, etc. :**

If any person or persons, or the agent of any person or persons, having in his or their possession, custody, or control, any goods, wares or merchandise, by virtue of any genuine instrument of writing, of the purport or effect of any such instrument of writing as is mentioned in either of the last two preceding sections, shall without authority, and with intent to injure or defraud the rightful owner thereof, sell, assign, transfer, or incumber such goods, wares or merchandise, or any part thereof, to the value of fifty dollars or upward, or shall in any way convert the same to his own use, or if the consignor or consignors, or the agent of such consignor or consignors of any goods, wares or merchandise, not being the absolute owner thereof, and not having authority to stop, countermand, or change the consignment thereof, or not having authority to sell or incumber the same during the transit, shall, after the shipment thereof on board any water-craft, or, after the deposit thereof in or upon any vehicle for land carriage, in any way stop, countermand, or change the consignment thereof, or shall sell, dispose of, or incumber such goods, wares or merchandise, during their transit, or after their delivery, or shall in any way convert the same, or any part thereof, to his or her own use, to the value of fifty dollars or upward, so that the rightful owner thereof shall sustain a loss thereby to the value of fifty dollars or upward, the person

so offending, with intent as aforesaid, shall be imprisoned in the penitentiary for a term not less than one nor more than four years. *Id.* sec. 7697.

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NOTE. For laws providing penalties for setting fire to or burglarizing dwellings, warehouses, etc., see Criminal Code, ch. II, sec. 48 *et seq.*

## DECISIONS AFFECTING WAREHOUSEMEN.

**A.**

*Bailment—Delivery to true owner always good defense for the bailee—Conversion.*

A bailee is bound to restore the property to his bailor, or account for it, but he has in legal contemplation accounted for it when he has delivered it to one whose demand and right of possession are paramount to that of his bailor. He may, if he chooses, yield possession to a stranger claiming the property, by taking the risk of establishing the title thus recognized. A refusal to deliver to the rightful owner constitutes a conversion of the property. *Shellenberg v. Fremont, E. & M. V. R. Co.*, 45 Neb. 487.

*Same—Special contract.*

Where a bailee agreed to keep property intrusted to him in a vault, he was bound under the terms of his contract to so keep the property, although, under the general principles of law governing his duty as bailee, he would not have been bound to exercise so high a degree of care. *Butler v. Greene*, 49 Neb. 280.

*Same—Involuntary bailee—Entitled to compensation.*

An involuntary bailee of goods is entitled to be paid a reasonable compensation for the storage and care until they are demanded of him. This case distinguished from *Moline, Milburn & Stoddard Co. v. Nerille*, 38 Neb. 433, where judgment was given for plaintiff who had declared on an express contract, which judgment was reversed on appeal for the reason that the verdict, finding that an express contract existed, was unsupported by the evidence. *Moline, Milburn & Stoddard Co. v. Nerille*, 52 Neb. 574.

**B.**

*Ordinary care.*

A bailee is required to exercise such care as a person of reasonable prudence would exercise under similar circumstances. *Butler v. Greene*, 49 Neb. 280.

*Conversion—Failure to deliver on demand.*

A bailee in possession of property belonging to another is under duty to surrender it upon demand upon the payment of just charges. A sufficient excuse would exist if there had been a prior lawful seizure of the property under judicial process issued against the owner. A refusal to surrender without a valid excuse constitutes a conversion for which the bailee is liable. *Wood Harvester Co. v. Dobry*, 59 Neb. 590.

**H.***Lien—Possession essential—Rule stated.*

It is a fundamental rule, that exclusive possession of the claimant whether a factor, broker or warehouseman, is essential to the existence, or continuance, of a lien in favor of one who holds property in subordination to the will or control of another. *Moline, M. & S. Co. v. Wood, M. & R. M. Co.*, 49 Neb. 869.

*Same—No lien attaches if contrary to terms of contract.*

Where a defendant warehouseman contracted to receive all of the goods consigned to it by the plaintiff, to store the same in its warehouse, and "to reship any of said goods or parts of same," on the order of the plaintiff, or his agents, it was held that this provision negatived any lien of the warehouseman for storage charges. This condition of the contract being interposed as preserving to the plaintiff his right, at pleasure, to sell and deliver the goods consigned to the defendant, and as imposing upon defendant a corresponding duty to yield possession thereof upon plaintiff's order, relying upon the personal credit of the latter for the amount of his storage charges. *Moline, M. & S. Co. v. Wood, M. & R. M. Co.*, 49 Neb. 869.

**K.***Execution—Cannot issue against bailee.*

Property held by a bailee as such cannot be lawfully attached in an execution issued against him. *McClelland et al. v. Scroggin*, 35 Neb. 536.

**Q.***Warehouse receipt—Negotiation after withdrawal of part of the deposited property.*

The plaintiff, a warehouseman, had issued a receipt for prop-

erty stored in his warehouse to the depositor and owner. The owner of the property withdrew a part thereof from the warehouse and subsequently assigned the receipt for the full amount to a purchaser for value and without notice that part of the property had been withdrawn. The purchaser presented the receipt to plaintiff who delivered all the original property remaining and pays to such purchaser the value of the property previously withdrawn. In an action against the former owner held that plaintiff was entitled to recover the amount paid the purchaser. *Michel v. Ware*, 3 Neb. 229.

*Same—Same—Qualified indorsement—Effect.*

An indorsement of a warehouse receipt "without guarantee" will not release the assignor of the implied warranty governing in all sales of property, that the subject-matter of the contract is *in esse* at the time it is made. *Id.*

*Same—Delivery without return of receipt—Conversion—Receipt need not be in any particular form.*

The defendant, a warehouseman, received and stored corn and issued therefor a receipt, as follows: "Received in store for account of B. & W., 3,000 sacks of corn." Subsequently, and without the knowledge of the defendant, B. & W. assigned the receipt to the plaintiff, as security for a pre-existing debt. The defendant delivered to B. & W. the corn represented by this receipt, and did not procure the return of the receipt. Held, that, on the above state of facts, the defendant warehouseman was liable to the plaintiff for the value of the corn. Further held that the contention that the receipt issued was not a formal warehouse receipt which did not provide in terms that it might be assigned, could not be sustained. *Harris v. Bradley*, 2 Dill. 284.

*Same—Who bona fide holder, a question for the jury.*

Whether or not a person who acquires a warehouse receipt by assignment is a *bona fide* holder is one for the determination of the jury. *Michel v. Ware*, 3 Neb. 229.

## R.

*Bill of lading—Indorsement—Effect.*

Bills of lading are symbols of property, and when properly indorsed operate as a delivery of the property itself, investing the indorsees with a constructive custody which serves all the purposes of an actual possession, and so continues until there is a valid and complete delivery of the property, under and in pursuance of the bill of lading, to the persons entitled to receive the same. *Union Pacific Ry. Co. v. Johnson et al.*, 45 Neb. 57.

## CHAPTER XXVIII.

## NEVADA.

NOTE. It seems that there are in Nevada no statutes in force pertaining to warehousemen as such.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Presumption if goods are lost—Conversion.*

When a person is intrusted with the care and custody of goods, it is his duty to return them at the end of the bailment, or account for their loss or show that it happened without legal negligence on his part. If he fails to do either the presumption is that he has converted them, or that they have been lost through his negligence, and he is responsible for them. *Dolan v. Clark* 23 Nev. 203.

## B.

*Same—Ordinary care—Gross negligence.*

This is equally true whether by the nature of the bailment, the bailee is bound to exercise ordinary care and diligence or is liable only for gross neglect. *Id.*

## N.

*Same—Loss of goods—Burden of proof.*

The burden of proving that they have been lost without his fault, being upon him, it is not sufficient for him to simply produce evidence to that effect. He must establish the fact to the satisfaction of the court. *Id.*

## CHAPTER XXIX.

## NEW HAMPSHIRE.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Bailee converting to his own use—Larceny :**

If any person to whom any money, goods, or property which may be the subject of larceny shall have been delivered or intrusted for keeping, or carriage, or use, or for manufacture, or work thereon, shall fraudulently dispose of or convert to his own use the same or any part thereof, or shall secrete the same or any part thereof, with intent so fraudulently to dispose of or convert to his own use, he shall be deemed guilty of larceny thereof, and shall be punished as for the larceny of goods of the same value. Sec. 11, ch. 275, P. S. 1901.

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NOTE. It seems that there are, in New Hampshire, no statutes pertaining to warehousemen, as such.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Sale by bailee without authority—Bailor protected.*

If a bailee sell property without authority, a purchaser, although buying in good faith, and without notice, acquires no title, and the owner may recover his property or its value from any one in possession. *Johnson v. Willey*, 46 N. H. 75; *Sanborn v. Colman*, 6 N. H. 14; *Lovejoy v. Jones*, 30 N. H. 169; *Sargent v. Gile*, 8 N. H. 325.

## B.

*Ordinary negligence.*

A bailee for hire is answerable for ordinary negligence. *Shellden v. Robinson*, 7 N. H. 157; *Smith v. Nashua & Lowell R. R.*, 27 N. H. 86.

## H.

*Lien—Waiver of—Possession.*

The right of lien is to be deemed to be waived when the party enters into a special agreement inconsistent with the existence of the lien, or from which a waiver of it may be fairly inferred. Possession is not only essential to the creation, but also to the continuance of a lien; when the party voluntarily parts with the possession of the property upon which the lien has attached, he is divested of the lien. *Pickett v. Bullock*, 52 N. H. 354.

## K.

*Attachment against bailed property.*

Where property has been bailed for hire, for a specific time, a creditor of the bailor cannot attach the property and take it from the bailee, during the term of the bailment. Where such attachment was made, and the property removed by the officer, *held* that the bailee was, notwithstanding, liable to the bailor for rent. *Hartford v. Jackson*, 11 N. H. 145.

## CHAPTER XXX.

## NEW JERSEY.

## LAWS PERTAINING TO WAREHOUSEMEN.

n Act to prevent the issue of false receipts and to punish fraudulent transfers of property by warehousemen, wharfingers and others, and to provide for the transfer of merchandise, receipts and other vouchers of indorsement. Approved March 11, 1881.

**Warehouseman not to issue receipt, etc.—Unless goods, etc., shall be in store and under his control :**

That no warehouseman, wharfinger, public or private inspector, or custodian of property, or other person or corporation, shall issue any receipt, acceptance of an order, or other voucher, for or upon wares, merchandise, provisions, grain, flour, or other produce or commodity, to any person or persons, or corporation, purporting to be the owner or owners thereof, or entitled or claiming to receive the same, unless such goods, wares, merchandise, provisions, grain, flour or other commodity shall have been actually received into the store or upon the premises of such warehouseman, wharfinger, inspector, custodian or other person, or corporation, as stated therein, and shall be in the store or upon the premises as aforesaid, and under his or its control at the time of issuing such receipt, acceptance or voucher. P. L. 1881, p. 100 sec. 1.

**Not to issue receipt, etc.—As security for indebtedness, unless goods, etc., shall be in store and under his control :**

That no warehouseman, wharfinger, custodian or other person or corporation shall issue, or cause to be issued, any receipt or other voucher upon any goods, wares, merchandise, provisions, grain, flour or other produce or commodity, to any person or persons, or corporation, as security for any money loaned

or other indebtedness, unless such goods, wares, merchandise, provisions, grain, flour or other produce or commodity shall be at the time of issuing such receipt or other voucher in the custody of such warehouseman, wharfinger or other person or corporation, and shall be in store or upon the premises and under his or its control at the time of issuing such receipt or other voucher as aforesaid. *Id.* sec. 2.

**When not to issue second or duplicate receipt, etc. :**

That no warehouseman, wharfinger, inspector, custodian or other person or corporation, shall issue any second or duplicate receipt, acceptance or other voucher, for or upon any goods, wares, merchandise, provisions, grain, flour or other produce or commodity while any former receipt, acceptance or voucher, for or upon any such wares, merchandise, provisions, grain, flour or other produce or commodity as aforesaid, or any part thereof, shall be outstanding and uncanceled without stamping or writing in ink across the face of the same "duplicate." *Id.* sec. 3.

**Not to sell or remove goods, etc., for which receipt has been given, without consent of person holding receipt:**

That no warehouseman, wharfinger, custodian or other person or corporation, shall sell or incumber, ship, transfer or in any manner remove beyond his immediate control any goods, wares, merchandise, provisions, grain, flour or other produce or commodity, for which a receipt shall have been given by him as aforesaid, whether received for storing, shipping, grinding, manufacturing or other purposes, without the written consent of the person or persons holding such receipt, except in case of a notice in writing served upon the person holding such receipt, demanding removal of the same, in which case the same shall be removed within twenty days after the service of such notice. *Id.* sec. 4.

**Master of vessel, etc., not to give bill of lading, etc., unless goods have actually been shipped :**

That no master, owner or agent of any vessel, or boat of any description, or officer or agent of any railroad company, or

other person, shall sign or give any bill of lading, receipt or other voucher or document, for any merchandise or property, from which it shall appear that such merchandise or property has been shipped on board any vessel, boat or railroad car unless the same shall have been actually shipped, and put on board such vessel, boat or car, and shall be at the time actually on board or delivered to such vessel, boat, or car, to be carried and conveyed as expressed in such bill of lading or other voucher or document. *Id.* sec. 5.

**How warehouse receipts, etc., may be transferred :**

That all warehouse receipts or other vouchers given for any goods, wares, merchandise, provisions, grain, flour or other produce or commodity stored or deposited with any warehouseman, wharfinger, corporation or other person or persons, may be transferred by indorsement or delivery thereof, and any person to whom the same may be transferred shall be deemed and taken to be the owner of the goods, wares and merchandise therein specified without notice of such transfer, or an actual delivery, or change of possession of the goods, wares, merchandise, grain, flour or other produce or commodity named therein, so far as to give validity to any pledge, security, lien or transfer made or created by any person or persons, corporation or corporations; but no property shall be delivered except on surrender and cancellation of said original receipt or the indorsement of such delivery thereon, in case of partial delivery; all warehouse receipts, however, which shall have the words "not negotiable" plainly written, printed or stamped on the face thereof, shall be exempt from the provisions of this section: *Provided, however,* that the person or persons, corporation or corporations, to whom such receipts or vouchers are indorsed and delivered, shall be subject to the same conditions as the person or persons, corporation or corporations, to whom the same were originally delivered. *Id.* sec. 6.

**Penalty for the violation of this act :**

That any warehouseman, wharfinger, inspector, custodian or other person or corporation who shall violate any of the foregoing provisions of this act shall be deemed guilty of a misde-

meanor, and, upon indictment and conviction, shall be fined in any sum not exceeding one thousand dollars or imprisonment not exceeding one year, or by both such fine and imprisonment; and all and every person or persons, corporation or corporations, aggrieved by the violation of any of the provisions of this act, may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as hereinbefore mentioned or not. *Id.* sec. 7.

**Act not to apply to property removed by operation of law :**

That so much of this act as forbids the delivery of property, except on surrender and cancellation of the original receipt, or the indorsement of such delivery thereon, in case of partial delivery, shall not apply to property removed by operation of law. *Id.* sec. 8.

An act concerning warehousekeepers. Approved April 5, 1886.

**Storage, cartage, etc., to be the first lien on goods left for storage :**

That the proprietor or proprietors of any warehouse for the storage of goods and chattels shall have the first lien on all goods and chattels left with them for storage for the amount of the bill due the proprietor of any such storage warehouse for such storage, or for any charges for carting or insurance contracted by the owner to be paid to him therefor, and shall have the right, without the process of law, to retain the same until the amount of indebtedness is discharged. P. L. 1886, p. 181, sec. 1.

**When property may be sold at public sale :**

That all property held on storage, for which the bill for storage or such other charges has not been paid for one year, may, in the whole or in part, be exposed by said proprietor for sale at public auction, upon a notice of said sale being first pub-

lished for the space of two weeks in some newspaper circulating in the city or township in which such goods are stored, and also after five days' notice of said sale, set up in five of the most public places in said city or township, and after mailing, if their addresses can be ascertained, to the owners of said goods, or to any one known by said proprietor to claim or to appear to have any mortgage or lien on or bill of sale for such goods, notice of sale two weeks before the day of sale; and the proceeds of said sale shall be applied to the payment of such lien and the expenses of such sale; and no more of such goods shall be sold, if they are of a nature as to be easily separated or divided, than shall be necessary, as near as may be, to pay such lien and expenses, and the balance, if any, shall be paid over to the owner of such goods when the goods shall be taken away or settled for in full. *Id.* sec. 2.

**When warehouseman not liable for taxed costs. Approved March 27, 1893 :**

That whenever a warehouseman at the time any goods or chattels are placed on storage with him shall obtain from the party placing such goods or chattels on storage a statement in writing that such goods are the sole and absolute property of the bailor aforesaid, and in any action of replevin thereafter brought in any court for the recovery of such goods or chattels by any person other than the bailor aforesaid, no costs of suit shall be adjudged, taxed or recovered against said warehouse-keeper in any action aforesaid, whenever judgment is obtained against the defendant in such action. P. L. 1893, p. 451, see. 1.

## DECISIONS AFFECTING WAREHOUSEMEN.

**A.***Bailment—Interpleader.*

A bailee is not entitled to call upon a party to interplead as to the right to the property, on the ground that, as to such party, he is a stakeholder or trustee, when at the time of the bailment, the party was unknown and had no connection with the transaction, and if his claim respecting the property is true, the bailee's possession of the property, if not tortious at its inception, became so after demand and refusal to deliver. *First Nat. Bank v. Bininger et al.*, 11 C. E. Gr. 345.

*Same—Same—Equity jurisdiction.*

In cases of adverse independent titles, the party holding the property must defend himself as well as he can at law, and he is not entitled to the assistance of a court of equity, for that would be to assume the right to try merely legal titles, upon a controversy between different parties, where there is no privity of contract between them and the third person who calls for an interpleader. *Id.*

*Conversion by bailee—May set up amount of claim secured by lien.*

A bailee, converting goods on which he has bestowed labor and acquired a lien, may, in an action of trover brought by the owner, set up his lien-claim in reduction of damages. *Long-street v. Phile*, 10 Vr. 63.

**H.***Liens—At common law and statutory.*

It is one of the characteristics of common-law liens, as distinguishing from liens created by contract or statute, that the former as a general rule attach to the property itself, without any reference to ownership, and override all other rights in the property, while the latter are subordinate to all prior existing rights therein. *Sullivan v. Clifton*, 26 Vr. 324.

## U.

*Attempt to compel service by injunction—Analogy between one conducting stockyard and a warehouseman—Not subject to public control—Equity jurisdiction.*

Complainant, a railroad corporation, attempted to compel the defendant, a corporation created for the purpose of carrying on a stockyard business, to receive live stock offered to it under certain conditions, on the ground that as it was engaged in a business of a public nature it was required to receive live stock from any one offering the same. The court *held* that as defendant's business was one of recent origin it was difficult to find its counterpart in any of the established instruments of commerce, but that it bore a closer resemblance to the business carried on by warehousemen than to any other business known to the law. Further that in order to entitle complainant to the relief asked it must show its right thereto by virtue of a contract, a usage or a statute; that in this case complainant failed to prove any such contract, usage or law and that an equity court was therefore without jurisdiction. The case of *Munn v. Illinois*, 94 U. S. 113, discussed and distinguished. There there was a duty owing under a statute, although it had been enacted subsequent to the erection of the warehouse and establishment of the business. The business was such, however, as was at all times subject to legislative control. *Delaware, L. & W. R. R. Co. v. Central Stock Yard & Transit Co.*, 18 Stew. 50, aff'd 1 Diek. 280.

## CHAPTER XXXI.

## NEW MEXICO.

NOTE. It seems that there are, in New Mexico, no laws pertaining to warehousemen, as such.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Ordinary care.*

A bailee for hire is bound to take as much care of property intrusted with him as a prudent man, mindful of his own interests, would take of his own property of a similar kind. *Waldo v. Beckwith*, 1 N. Mex. 97.

## R.

*Bill of lading—Exemption, effect of.*

Where the bill of lading provided that a carrier should not be liable for losses resulting from unavoidable accident, it was held such an exemption would not limit or restrict the responsibility or liability imposed by law upon common carriers. *Seligman & Bro. v. Amijo*, 1 N. Mex. 459.

## CHAPTER XXXII.

## NEW YORK.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Warehouseman to hold possession subject to order of court :**

Whenever in any action or proceeding commenced, or about to be commenced, there shall be brought into question the title to or right of possession of any goods, wares or merchandise on storage in any warehouse, the warehouse company, or person or persons having the possession thereof as such warehouseman shall, after service upon it, them or him, of a notice setting forth the alleged claim of the plaintiff, and the name of the court in which the action or proceeding is pending, or about to be commenced, hold such goods, wares or merchandise subject to the order of the court in which such action or proceeding is about to be or may be brought, and shall deliver the same to the person or persons named in any order, judgment or decree made by such court for the delivery thereof; after the payment to such warehouseman for all lawful charges for the care and custody of such goods, wares or merchandise; but no order, judgment or decree for the delivery of such goods, wares or merchandise, shall be made except upon proof to the satisfaction of the court that the person named in said order is the owner or entitled to the possession thereof, after service of a notice as hereinbefore specified, (upon the) warehouse company or the persons or person having possession of any such goods, wares or merchandise, and the court or any judge thereof may direct the attendance of such warehouse company, persons or person, its, their or his agents, servants or employees, and the production of all papers, books or documents pertaining to the property in question for the purpose of examination as to the title of such goods, wares and merchandise. Laws, 1895, ch. 633.

**Section 2 of the above law held to be unconstitutional :**

The second section of the above provides that: "No warehouse company or person or persons lawfully engaged in the business of storing goods, wares and merchandise for hire, shall be made a party defendant in any action concerning the title to or possession of any goods, wares or merchandise, held on storage by such warehouse company, persons or person, unless such warehouse company, persons or person, so holding the same on storage, shall claim some right, title or interest of, in or to the same, other than a lien for the lawful charges growing out of the care and custody thereof." In the trial of an action of replevin for the recovery of the plaintiff's goods, the plaintiff alleged that she had made a tender of all lawful charges, the complaint was dismissed on motion of the defendant on the ground that the above section applied and that a warehouseman could not be made a defendant except where his claim was for some other charge than on a lien for storage. It was held on appeal that the dismissal of the complaint was error, that the facts made by the pleadings should have been tried in the usual manner before a jury and that section two of the Laws of 1895, ch. 633, as given above, was unconstitutional and void. It would give to warehousemen an opportunity to make whatever charges they might wish and would protect them from being made defendants in an action for the recovery of such goods although such charges might be excessive and extortionate. Therefore, the case was reversed and sent back for trial. *Cottew v. Dube*, 32 Misc. 632; *Follett Wool Co. v. Albany Terminal Warehouse Co.*, 61 App. Div. 296.

**Rate of interest on loans or warehouse receipts :**

Upon advances of money repayable on demand to an amount not less than five thousand dollars made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds or other negotiable instruments, pledged as collateral security for such repayment, any bank or individual banker may receive or contract to receive and collect as compensation for making such advances any sum to be agreed upon in writing by the parties to such transaction. Laws, 1900, ch. 310, sec. 56.

**Warehouseman's liens :**

A warehouse company, warehouseman or other person lawfully engaged in the business of storing goods, wares and merchandise for hire has a lien on goods deposited and stored with him for his storage charges, and for moneys advanced by him for cartage, labor, weighing and coopering in relation to such goods, or other goods belonging to the same owner, and he may detain such goods until his lien is paid. Laws, 1897, art. 6, ch. 418, sec. 73.

**Enforcement of liens on personal property by sale—Sale of personal property to satisfy a lien :**

A lien against personal property, other than a mortgage on chattels, if in the legal possession of the lienor, may be satisfied by the public sale of such property according to the provisions of this article. *Id.* sec. 80.

Before such sale is held the lienor shall serve a notice upon the owner with due diligence within such county, if such owner can be found when such lien arose, if not, then to the person for whose account the same is then held personally, provided such service can be made with due diligence, within the county where such lien arose, but if such person cannot with due diligence be found within such county, then such notice shall be served by mailing it to him at his last known place of residence, or to his last known post-office address. A like notice shall be served in the same way upon any person who shall have given to the lienor notice of an interest in the property subject to the lien. Such notice shall contain a statement of the following facts: First, the nature of the debt or the agreement under which the lien arose, with an itemized statement of the claim and the time when due; second, a brief description of the personal property against which the lien exists; third, the estimated value of such property; fourth, the amount of such lien at the date of the notice. It shall also require such owner or person to pay the amount of such lien on or before a day mentioned therein, not less than ten days from the service thereof, and shall state the time when and place where such property will be sold, if such amount is not paid. If the agreement on which the lien is based provides for the continuous care of

property the lienor is also entitled to receive all sums which may accrue under the agreement, subsequent to the notice and prior to payment or a sale of the property; and the notice shall contain a statement that such additional sum is demanded. Such notice shall be verified by the lienor to the effect that the lien upon such property is valid, that the debt upon which such lien is founded is due, and has not been paid and that the facts stated in such notice are true to the best of his knowledge and belief. *Id.* sec. 81 (as amended).\*

#### **Sale to be advertised (as amended) :**

Each sale of personal property to satisfy a lien thereon shall be at public auction to the highest bidder, and shall be held in the city or town where the lien was acquired. After the time for the payment of the amount of the lien specified in the notice required to be served by the preceding section, notice of such sale, describing the property to be sold, and stating the name of the owner or person for whose account the same is then held and the time and place of such sale, shall be published once a week for two consecutive weeks, in a newspaper published in the town or city where such sale is to be held, and such sale shall be held not less than fifteen days from the first publication; if there be no newspaper published in such town, such notice shall be posted at least ten days before such sale in not less than six conspicuous places therein. *Id.* sec. 82.

#### **Redemption before sale :**

At any time before such property is so sold the owner thereof may redeem the same by paying to the lienor the amount due on account of the lien and whatever legitimate expenses have been incurred at the time of such payment in serving the notice and advertising the sale as required in this article. Upon making such payment, the owner of such property is entitled to the possession thereof. *Id.* sec. 83.

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\* Copy of printed law as issued by Secretary of State. Bill as introduced was amended previous to enactment. Should read: "Before such sale is held the lienor shall serve a notice upon the owner if such owner can be found, with due diligence within the county where such lien arose."

**Disposition of proceeds:**

Of the proceeds of such sale, the lienor shall retain an amount sufficient to satisfy his lien and the expenses of advertisement and sale. The balance of such proceeds, if any, shall be held by the lienor subject to the demand of the owner, or his assignee or legal representative, and a notice that such balance is so held shall be served personally or by mail upon the owner of the property sold. If such balance is not claimed by the owner or his assignee or legal representative within thirty days from the day of sale, such balance shall be deposited with the treasurer or chamberlain of the city or village, or the supervisor of the town where such sale is held. There shall be filed with such deposit the affidavit of the lienor, stating the name and place of residence of the owner of the property sold, if known, the article sold, the prices obtained therefor, that the notice required by this article was duly served and how served upon such owner, and that such sale was legally and how advertised. There shall also be filed therewith a copy of the notice served upon the owner of the property and of the notice of sale published or posted as required by this article. The officer with whom such balance is deposited shall credit the same to the owner of the property, and pay the same to such owner, his assignee or legal representative, on demand and satisfactory evidence of identity. If such balance remains in the possession of such officer for a period of five years, unclaimed by the person legally entitled thereto, it shall be transferred to the general funds of the town, village or city, and be applied and used as other moneys belonging to such town, village or city.

*Id.* sec. 84.

**Remedy not exclusive:**

The provisions of this article do not preclude any other remedy by action or otherwise, now existing, for the enforcement of a lien against personal property, or bar the right to recover so much of the debt as shall not be paid by the proceeds of the sale of the property. *Id.* sec. 85.

Laws, 1897, ch. 418, art. 7, as amended by Laws, 1899, ch. 369.

(This law repeals all of ch. 336, Laws, 1879.)

**Elevator charges regulated :**

The maximum charge for elevating, receiving, weighing and discharging grain by means of floating and stationary elevators and warehouses in this state shall not exceed the following rates, namely: For elevating, receiving, weighing and discharging grain, five eighths of one cent a bushel. In the process of handling grain by means of floating and stationary elevators, the lake vessels or propellers, the ocean vessels or steamships, and canal boats, shall only be required to pay the actual cost of trimming or shoveling to the leg of the elevator when unloading, and trimming cargo when loading. Laws 1888, ch. 581, sec. 1.

**Violations thereof a misdemeanor—Penalty :**

Any person or persons violating the provisions of this act shall upon conviction thereof be adjudged guilty of a misdemeanor, and be punished by a fine of not less than two hundred and fifty dollars and costs thereof. *Id.* sec. 2.

**Damages—How recovered :**

Any person injured by the violation of the provisions of this act may sue for and recover any damages he may sustain against any person or persons violating said provisions. *Id.* sec. 3.

**Act how to apply :**

This act shall not apply to any village, town or city having less than one hundred and thirty thousand population. *Id.* sec. 4.

This act shall take effect immediately. *Id.* sec. 5.

**Fees and charges for elevators and warehouses :**

The maximum charge for elevating, receiving, weighing and discharging grain by means of floating and stationary elevators and warehouses in any city having a population of one hundred and thirty thousand or over, shall not exceed five eighths of one cent a bushel. In the process of handling grain by means of floating and stationary elevators, the lake propellers or vessels, the ocean vessels or steamships and canal

boats shall only be required to pay the actual cost of trimming or shoveling to the leg of the elevator when unloading, and trimming cargo when loading; and in any case the fee charged for the use of a shovel operated by steam or other mechanical power, in connection with any floating or stationary elevator, shall not exceed the sum of one dollar and fifty cents for each thousand bushels elevated.

For every violation of any provision of this article, the person committing such violation shall forfeit to the people of the state the sum of two hundred and fifty dollars. A person injured by a violation of this section may recover any damages sustained from the person violating the same.

This act shall take effect immediately. Laws, 1896, ch. 376, sec. 32, as amended by Laws, 1903, ch. 366.

#### **Overcharging, a misdemeanor :**

A person who charges for elevating, receiving or discharging grain by means of floating or stationary elevators a greater sum than is allowed by law is guilty of a misdemeanor. Laws, 1896, ch. 551, sec. 384c.

#### **Above act held to be constitutional :**

The above act held to be a constitutional exercise of the police power of the state, that the business of elevating grain was one "affected with a public interest" and that therefore the legislature had a right to prescribe the maximum rates which might be charged for storage. *People v. Budd*, 117 N. Y. 1, aff'd 143 U. S. 517. (For complete collection of cases on the above see New York Decisions, page 601.)

#### **Demand loans of five thousand dollars and upwards, on collateral, may bear any interest :**

In any case hereafter in which advances of money, repayable on demand, to an amount not less than five thousand dollars, are made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds or other negotiable instruments pledged as collateral security for such repayment, it shall be lawful to receive or to contract to receive and collect, as compensation for making such advances, any

sum to be agreed upon in writing by the parties to such transaction. Laws, 1882, ch. 237, sec. 1. Section 2 repeals all inconsistent acts.

#### **When factor deemed owner :**

Every factor or other agent, intrusted with the possession of any bill of lading, custom house permit, or warehousekeeper's receipt for the delivery of any such merchandise, and every such factor or agent not having the documentary evidence of title, who shall be intrusted with the possession of any merchandise for the purpose of sale, or as a security for any advances to be made or obtained thereon, shall be deemed to be the true owner thereof, so far as to give validity to any contract made by such agent with any other person, for the sale or disposition of the whole or any part of such merchandise, for any money advanced, or negotiable instrument or other obligation in writing, given by such other person upon the faith thereof. Laws, 1830, ch. 179, sec. 3.

#### **Merchandise pledged by factor :**

Every person who shall hereafter accept or take any such merchandise in deposit from any such agent, as security for any antecedent debt or demand, shall not acquire thereby, or enforce any right or interest in or to such merchandise or document, other than was possessed or might have been enforced by such agent at the time of such deposit. *Id.* sec. 4.

#### **Rights of true owner :**

Nothing contained in the last two preceding sections of this act shall be construed to prevent the true owner of any merchandise so deposited, from demanding or receiving the same, upon repayment of the money advanced, or on restoration of the security given, on the deposit of such merchandise, and upon satisfying such lien as may exist thereon in favor of the agent who may have deposited the same; nor from recovering any balance which may remain in the hands of the person with whom such merchandise shall have been deposited, as the produce of the sale thereof, after satisfying the amount justly due to such person by reason of such deposit. *Id.* sec. 5.

**Sale or pledge by common carrier, etc.:**

Nothing contained in this act shall authorize a common carrier, warehousekeeper, or other person to whom merchandise or other property may be committed for transportation or storage only, to sell or hypothecate the same. *Id.* sec. 6.

**Powers of court, etc. :**

Nothing contained in the last preceding section shall be construed to prevent the court of chancery from compelling discovery, or granting relief upon any bill to be filed in that court by the owner of any merchandise so intrusted or consigned against the factor or agent by whom such merchandise shall have been applied or sold contrary to the provisions of the said section, or against any person who shall have been knowingly a party to such fraudulent application or sale thereof; but no answer to any such bill shall be read in evidence against the defendant making the same, or the trial of any indictment for the fraud charged in the bill. *Id.* sec. 8.

**Issuing fictitious bills of lading, receipts and vouchers :**

A person who: 1. Being the master, owner or agent of any vessel, or officer or agent of any railway, express or transportation company or otherwise being or representing any carrier, who delivers any bill of lading, receipt or other voucher, by which it appears that merchandise of any kind has been shipped on board of a vessel, or delivered to a railway, express or transportation company, or other carrier, unless the same has been so shipped or delivered and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher; or, 2. Carrying on the business of a warehouseman, wharfinger or other depository of property, who issues any receipt, bill of lading or other voucher for merchandise of any kind which has not been actually received upon the premises of such person, and is not under his actual control at time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness; is guilty of a misdemeanor, punishable by im-

prisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. Pen. Code, sec. 629, as amended, Laws, 1892, ch. 692.

**Last two sections qualified :**

No person can be convicted of an offense under the last two sections, for the reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt, or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponds substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels or brands were untrue. Pen. Code, sec. 630.

**Duplicate receipts must be marked :**

A person mentioned in sections 628 and 629, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while a former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncancelled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. *Id.* sec. 631.

**Selling, etc.—Property received for transportation or storage :**

A person mentioned in sections 628 and 629, who sells or pledges any merchandise for which a bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. *Id.* sec. 632.

**Bill of lading, when to be cancelled :**

A person mentioned in section 629, who delivers to another any merchandise for which a bill of lading, receipt or voucher has been issued, unless such receipt or voucher bears upon its

face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be cancelled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. *Id.* sec. 633.

### **Property demanded by process of law :**

The last two sections do not apply to any case where property is demanded by virtue of legal process. *Id.* sec. 634.

**An Act to define the rights of persons and corporations engaged in the business of storing personal chattels, and to regulate the said business.**

Section 1. Whenever hereafter a demand shall be made upon a warehouseman for a personal chattel held by him on storage, by a person other than him from whom such chattel was received, or other than the holder of the warehouse receipt outstanding, the warehouseman shall with due diligence give notice of the demand to the person from whom the chattel was received and the person in whose name a warehouse receipt for the chattel is outstanding. Such notice may be given personally or by mail to the last known post-office address of the party entitled to notice, if he shall have registered an address with the warehouseman. If the depositor or person in whose name the warehouse receipt is outstanding shall not, within ten days after service of the notice as aforesaid, authorize the delivery of the chattel to the claimant, he shall be deemed to have refused to deliver and the claimant may sue the depositor or the person in whose name the warehouse receipt is outstanding, in replevin or for conversion. The warehouseman may refuse to deliver a personal chattel to the depositor or holder of the warehouse receipt after a demand is made upon him as aforesaid and during twenty days after notice of the demand to the depositor or holder of an outstanding warehouse receipt. The warehouseman shall not, by reason of such a refusal nor by reason of such retention incur any liability to any person and shall not be sued for and on account of such refusal at law or in equity. And

after a suit in replevin shall be brought by the claimant, and the warehouseman is notified thereof, the warehouseman shall hold the chattel subject to the order of the court in which such action in replevin is brought and shall deliver the same only to the person named in the judgment entitled to the delivery. After an action for conversion of the personal chattel is brought by the claimant against the depositor or holder of a warehouse receipt, the warehouseman may at any time deliver the chattel to the holder of the warehouse receipt. For the purposes of all actions concerning title to a personal chattel held by a warehouseman on storage or for the possession of such chattel, the possession of the warehouseman shall be deemed to be the possession of the depositor or holder of a warehouse receipt. The depositor of a chattel shall register with the warehouseman his name and address and shall notify the warehouseman of any transfer of the warehouse receipt, giving the name and residence of the transferee, and the depositor or the transferee shall notify the warehouseman of any change in such address. The warehouseman may make known to the claimant of a chattel the name and address of the depositor, and where such name and address is so made known the warehouseman shall not be made defendant in an action for conversion or replevin unless he shall claim some right, title or interest in the chattel other than a lawful lien for lawful charges growing out of the care and custody of such personal chattel. If the legality or amount of such charges be disputed, the warehouseman may be made a party to the action for the purpose of determining that issue only, and shall recover costs if his claim be substantially sustained. If the person in whose name a warehouse receipt is outstanding has ceased to reside or to have a place of business at the address left with the warehouseman and cannot, after due diligence, be found, a court of record in which an action to replevin the chattel is pending or is about to be brought may make an order that the summons may be served upon the person holding the warehouse receipt, in the manner provided in and by the Code of Civil Procedure. In such a case any judgment recovered by the plaintiff shall be only against the depositor or person in whose name the warehouse receipt is outstanding and before any judgment shall

be recovered the plaintiff shall prove his title. If judgment is recovered by the plaintiff directing the delivery of the chattel to the plaintiff, the warehouseman shall obey the judgment and make the delivery upon payment of his lawful charges and he shall not thereafter be liable to the depositor or the holder of the warehouse receipt on account of such delivery.

Sec. 2. A warehouseman shall have a lien upon goods stored with him for his charges for storage, cartage, labor, freight, insurance, and other advances thereon, including weighing and coopering in relation to such goods or other goods belonging to the same owner and he may detain such goods until his lien is paid. Such lien of a warehouseman shall be prior and superior to the lien of a chattel mortgage and to any lien or right, title or interest of the vendor in a conditional sale or a sale upon installments, where the chattel mortgage is not made in the name of the depositor or holder of the warehouse receipt, and where the contract or conditional sale is not required by law to be filed and where the warehouseman has not actual knowledge of the chattel mortgage or conditional sale. A warehouseman shall not have a lien for storage charges upon stolen goods.

Sec. 3. Whenever a warehouseman shall carry a personal chattel to his warehouse or deliver a personal chattel out of his warehouse and to another place, he shall be liable for the negligence of himself and his servants during the packing, loading, carrying and unloading of the personal chattel and shall not be liable otherwise.

Sec. 4. The term warehouseman in this act shall include every person, partnership, association, or corporation regularly engaged in the business of storing furniture, household effects and similar chattels.

Sec. 5. This act shall take effect immediately. Laws, 1902, ch. 608.

Section 1. The forest, fish and game law is hereby amended by adding thereto a new section to be known as section one hundred and forty-one, which shall read as follows:

Sec. 141. Wherever in this act the possession of fish, game,

or the flesh of any animal, bird or fish, is prohibited, reference is had equally to such fish, game or flesh coming from without the state as to that taken within the state. Provided nevertheless, that if there be any open season therefor, any dealer therein, if he has given the bond herein provided for, may hold during the close season such part of his stock as he has on hand undisposed of at the opening of such close season. Said bond shall be to the people of the state, conditioned that such dealer will not during the close season ensuing, sell, use, give away or otherwise dispose of any fish, game, or the flesh of any animal, bird or fish which he is permitted to possess during the close season by this section; that he will not in any way during the time said bond is in force, violate any provision of the forest, fish and game law; the bond may also contain such other provisions as to the inspection of the fish and game possessed as the commission shall require, and shall be subject to the approval of the commission as to amount and form thereof, and the sufficiency of sureties. But no presumption that the possession of fish or game or the flesh of any animal, bird or fish is lawfully possessed under the provisions of this section shall arise until it affirmatively appears that the provisions thereof have been complied with.

Sec. 2. This act shall take effect immediately. Laws, 1902, ch. 194.

## DECISIONS AFFECTING WAREHOUSEMEN.

## B.

*Ordinary care—Definition—Question of fact.*

A warehouseman is bound to exercise ordinary care and diligence in respect to the property intrusted with him, which may be defined to be that degree of care which men of common prudence in general exert under similar circumstances, with regard to their own property or affairs. What omission or want of care would amount to ordinary neglect in such cases is, as a general rule, rather a matter of fact than law; and if there be any evidence to sustain the verdict of the jury, it will not be disturbed by an appellate court. *Smith v. Simms*, 51 How. Pr. 305; *Arent v. Squire*, 1 Daly, 350; *Jones v. Morgan*, 90 N. Y. 4; *Madan v. Covert*, 13 J. & S. 245; *Williamson v. N. Y., N. H. & H. R. R. Co.*, 22 St. Rep. 431; *Byrne v. Fargo*, 36 Misc. 543; *Schmidt v. Blood*, 42 Amer. Dec. 143; *Knapp v. Curtis & Root*, 9 Wend. 60; *Tittsworth v. Winnegar*, 51 Barb. 148; *Foote v. Storrs*, 2 Barb. 326; *Schmidt & Webb v. Blood & Green*, 9 Wend. 268; *Schwerin et al. v. McKie et al.*, 51 N. Y. 180; *Liverpool & Great Western Steam Co. v. Suitter et al.*, 17 Fed. Rep. 695; *Kaiser v. Latimer*, 9 App. Div. 36.

*Same—Prima facie case—Burden of proof—Presumption rebutted.*

A *prima facie* case is made against a warehouseman when the plaintiff shows delivery to the warehouseman and the return of the goods in a damaged condition, or the warehouseman's failure to redeliver upon demand. The burden of proof is then upon the warehouseman to show that the damage or loss was not a result of a breach of the duty owed by him as warehouseman to the plaintiff. The theory that one is presumed to have done his duty until the contrary be shown does not apply to a case where a warehouseman delivers goods intrusted to his care in a damaged condition, or fails to deliver them. Such action on the part of the warehouseman rebuts this presumption. *Arent v. Squire*, 1 Daly, 347; *Reed v. Crowe et al.*, 13 Daly, 164; *Williamson v. N. Y., N. H. & H. R. R. Co.*,

2<sup>d</sup> St. Rep. 431; *Lynch v. Kluber*, 20 Misc. Rep. 601; *Draper v. D. & H. C. Co.*, 118 N. Y. 118.

*When warehouseman liable as common carrier—Assuming to act as carrier—Termination of contract of storage.*

A warehouseman had stored plaintiff's goods and the term for which they were stored having expired she thereupon paid all the storage charges due and surrendered the contract. Plaintiff then engaged the defendant warehouseman to remove the goods from his warehouse and take them to her home. Subsequently and while in the warehouse before being removed, the goods were destroyed by fire. *Held* that the contract of storage had terminated and that the defendant was liable as a carrier and hence as an insurer of the goods. *Snelling v. Yetter*, 25 App. Div. 590; *Wade v. Wheeler*, 3 Lans. 201, aff'd 47 N. Y. 658.

*Delivery—Of key.*

The delivery of the key of the warehouse containing the goods to be transferred *held* a delivery of the goods. *Wilkes v. Ferris*, 5 Johns. 335.

*Same—To consignee without authority—Warehouseman liable for freight charges—Conversion.*

Where a common carrier stores freight with a warehouseman, the possession of the warehouseman becomes that of the carrier, and if the warehouseman, without authority, delivers the goods to the consignee, he is liable to the carrier for the amount of the freight. The action of the warehouseman in this respect constitutes a conversion of the goods. *Compton v. Shaw*, 1 Hun, 441; *Williard v. Bridge*, 4 Barb. 361.

*Same—To wife on forged order.*

The defendants held several United States bonds for the plaintiff as his bailee. They had been instructed by the plaintiff not to deliver the bonds except upon his written order. It appeared that the wife of the plaintiff presented an order for the bonds to the defendants, purporting to be signed by her husband and that the defendants delivered the bonds to her. It was contended in behalf of the defendants that independent

of any agency on the part of the wife, that because at common law a wife's possession of a chattel was deemed the possession of her husband, the delivery of the bonds to her was equivalent to a delivery to the plaintiff. It was *held* that this contention could not be sustained; that the bonds had been obtained fraudulently and that the defendants were liable therefor. Further that the attempt to show a cross liability on the part of the plaintiff for the fraud committed by his wife could not be allowed as this would be equivalent to enforcing a right of action against the plaintiff alone for a tort committed wholly by his wife. *Kowing v. Manly et al.*, 49 N. Y. 192.

*Same—Improper delivery to husband—Conversion.*

A large quantity of jewelry was deposited with the defendant by the plaintiff. A receipt was issued to her in which it was stated, "This receipt must be returned on delivery of the goods, and all liability under this receipt shall cease with the delivery of such package and contents to holder hereof." Subsequently the defendant delivered the jewelry to the husband of the plaintiff without the return of the receipt. In an action for the value thereof it was *held* that the defendant was liable therefor, that the wrongful delivery of the property to the husband of the plaintiff constituted a conversion. *Markoe v. Tiffany & Co.*, 26 App. Div. 95.

*Same—What will not constitute—Evidence.*

In an action against a warehouseman to recover for the loss of a trunk alleged to have been intrusted to him, the plaintiff's evidence showed that an expressman had left the trunk at the defendant's warehouse. On cross-examination the expressman was unable to say that he had delivered it at any particular door or had not actually left it in the street. Further, he did not recollect whether or not he had called the attention of any of the defendant's employees to the trunk. No receipt was taken upon this alleged delivery and no contract with regard to the storage of the trunk was proven. It was *held* that this evidence was clearly insufficient to prove a delivery for the purpose of charging warehouseman upon his failure to return the trunk upon plaintiff's demand. Testimony given

by the plaintiff to the effect that an agent of the defendant had admitted nine months after the transaction that the trunk had been received was held improper, that such testimony formed no part of the *res gestæ* and that the objection to the reception of this testimony was well taken. *Strong v. Union Transfer & S. Co.*, 11 Misc. 430.

*Cannot deny bailor's title.*

A warehouseman having received property from the plaintiff will not be permitted to defeat his right to its return by attempting to interpose the claim of ownership in a third person. *Leoncini v. Post*, 37 St. Rep. 255; *Gruel v. Yetter*, 27 Misc. 494; *Mullins v. Chickering*, 110 N. Y. 514; *Transportation Co. v. Barber*, 56 N. Y. 547; *Wheeler v. Lawson*, 103 N. Y. 40; *Frost v. Mott*, 34 N. Y. 253.

*Conversion—Wrongful sale for storage without notice to owner.*

A warehouseman received goods for storage and three years afterwards sold the same, without notice to the bailor as required by ch. 336, Laws of 1879. *Held* that the sale made under such conditions was a conversion of the goods for which the warehouseman was liable. *Todd v. Haeger*, 12 St. Rep. 633.

*Same—Refusal to deliver to true owner—Time for investigation as to ownership.*

It has been held that before the refusal of a bailee to deliver goods in his possession to one who claims he is the true owner thereof, will amount to a conversion, that such bailee if he has any honest doubts as to the ownership of the property is entitled to a reasonable time in which to investigate. An unqualified refusal to deliver *held* to constitute a conversion. *Rogers v. Wier*, 34 N. Y. 463.

*Warehouseman guarantor of advances—Entitled to subrogation.*

Where a third party makes advances on goods stored with a warehouseman and the warehouseman guarantees the payment of such advances and finally pays the same, he is subrogated to all the rights of such third party in the goods. *Kilpatrick v. Dean et al.*, 3 N. Y. Supp. 60, aff'd 15 Daly, 182.

*Same—Judgment for storage charges, not a bar to an action for conversion.*

In an action against a warehouseman for conversion of certain wood stored with him, it was *held* that a judgment procured by the defendant against the plaintiff for storage charges was not a bar to this action, the record of the proceedings before the justicee who tried the case not showing that the wood in question had been delivered to the owner. *Merritt v. Peirano*, 10 App. Div. 563.

*Change of proprietorship of warehouse—Request upon depositor to withdraw his goods—Effect—Market rate of storage—Duty of warehouseman.*

The defendant had stored a quantity of wood in a warehouse and had received therefor a receipt in which the rate of storage per month was stated, it being the market rate therefor. Subsequently the warehouse was taken possession of by the plaintiff who assumed all outstanding contracts of storage. Thereafter, plaintiff notified the defendant that he must withdraw the wood from the warehouse or else pay a greatly advanced rate. Defendants refused to comply with this request and allowed the wood to remain in the warehouse, offering to pay the market rate for the storage thereof. In an action to sell the wood pursuant to its lien for unpaid storage, it was *held* that after the refusal of the defendant to remove the wood as requested, that this terminated the contract of storage but that the plaintiff would be entitled only to recover whatever the market rate for such storage might be shown to be at that time and not the exorbitant charge claimed by the plaintiff. Further *held* that plaintiff was not bound to retain the property after the contract of storage was terminated by his notice but that he would have been justified in removing it after that date and depositing it in a warehouse at the risk and expense of the owners subject to any lien he might have prior to the removal. *Hazeltine et al. v. Weld et al.*, 73 N. Y. 156.

*Same—Several liability—Holding in official capacity no defense.*

The defendant took possession of and operated a warehouse

in which the plaintiff's goods were stored, and during the term of such storage the goods were injured. It was *held* that he was severally liable to the owner of the goods although the warehouse company which had previously operated the warehouse was a defendant also. As the injury happened while he was in possession he was liable for the same. The defendant attempted to show that he was not liable on the ground that he held and conducted the warehouse in an official capacity. The plaintiff denied that she had any notice or knowledge of such representative capacity. It was *held* therefore that this defense could not be maintained. *Kaufman v. People's Cold Storage*, 10 Misc. 553; *Kaufman v. Morgan*, 10 Misc. 554.

*Same—What sufficient to make prima facie case.*

The defendant company took possession of a warehouse formerly operated by another firm and notified all the depositors that the customers would in no way be affected by the change in ownership. The plaintiff had deposited goods in the warehouse prior to this change, but upon receiving the goods from the warehouseman found that they were damaged. In an action for the value thereof, it was *held* that the plaintiff made out a *prima facie* case against the defendant by showing delivery to the former owner and the damaged condition when received, and that it was error to dismiss the case upon this showing. *Isler et al. v. Linds Co.*, 67 N. Y. Supp. 1072; *Smith v. Railroad Co.*, 43 Barb. 225, aff'd 41 N. Y. 620.

*Evidence—Demand—Burden of proof.*

In an action against a warehouseman for failure to deliver the goods upon demand, it was *held* that the plaintiff made out a *prima facie* case by showing the delivery to the warehouseman and such failure to redeliver. The court *held* that the warehouseman is liable in such a case unless he can account for the loss of the goods by showing that they were taken from his possession without any fault on his part. *Coleman v. Livingston*, 4 J. & S. 32; *Burnell v. N. Y. & C. R. R. Co.*, 45 N. Y. 184. But see *Claylin et al. v. Meyer*, 75 N. Y. 260.

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*Claim of title by a third person—Warehouseman not entitled to equitable relief—Interpleader.*

The complainant, a warehouse company, filed a bill in equity alleging that various persons claimed title to a large quantity of arms stored with it and also that there were charges for storage due for which the complainant had its lien thereon. The bill prayed that all parties thereto be restrained from further proceedings and that they be compelled to interplead. The court *held* that the motion of the complainant for an injunction *pendente lite* must be denied on the ground that he had no right to maintain an action of interpleader as he must defend himself at law, the question at issue being one purely of the legal title to the property. *Bartlett et al. v. His Imperial Majesty, The Sultan, etc.*, 23 Fed. Rep. 257; *Crawshay v. Thornton*, 2 Mylne & C. 1.

6.

*Government bonded warehouse—Effect of statute—Burden of proof.*

In an action against a government bonded warehouseman for the value of certain cigars, alleged to have been lost while in his custody, it was contended on behalf of the defendant that the goods deposited with him were at the owner's risk under the terms of the Act of Congress pertaining to bonded warehousemen (10 U. S. Stat. at L. p. 270). It was *held* that the provision of this statute stating that the goods were held at the owner's risk applied only to the United States government and not to the warehouseman, it not being the intention of congress to change thereby the liability of bonded warehousemen for the exercise of due and ordinary care. *Schrerin et al. v. McKie et al.*, 51 N. Y. 180.

*Same—Statute requiring withdrawal within one year—Effect of such withdrawal when negotiable warehouse receipt outstanding—One taking receipt after the expiration of the year not a bona fide holder.*

The defendants, who conducted a bonded warehouse, delivered to a depositor a negotiable receipt for a large quantity of whiskey which was stored therein. In the receipt it was stated that the whiskey was deliverable to the bearer only

after the payment in cash of the short price, the government tax and storage charges. On the back of the receipt there was a copy of the statutes of Kentucky by which such receipts were made negotiable and transferable by indorsement in blank with the same liability attaching to the negotiation of bills of exchange. The defendants duly gave a bond as required by the Revised Statutes of the United States conditioned that they would pay the tax on the whiskey as specified on the entry, before removal from the distillery warehouse and within one year from the date of the bond. A year thereafter the defendants shipped the whiskey to the depositor. It subsequently appeared that this depositor had indorsed the receipt after the expiration of the year to the plaintiff who brought an action for conversion against the defendant warehouseman. Upon the above stated facts, it was *held* that the warehouseman was not liable; that the plaintiff when he took the warehouse receipt was in a similar position to one who accepts a bill of exchange after maturity, that is, he took with all the equities; that the warehouseman had no right nor power under the Revised Statutes of the United States to hold the whiskey after the expiration of the year and that the plaintiff was chargeable with knowledge of this statute. An examination of the receipt would have shown the plaintiff that a year had expired since the issuance thereof and that, therefore, it could not then be lawfully in the warehouse of the defendant. *Van Schoonhoven v. Curley et al.*, 86 N. Y. 187.

*Same—Representation on warehouse receipt that liquor in “free warehouse.”*

If a warehouse receipt state that the liquor represented thereby is stored in a “free warehouse” whereas in fact the government tax has not been paid, such warehouseman will be liable for the amount of such tax to an innocent holder of the receipt. *First Nat. Bank v. Dean et al.*, 137 N. Y. 110, aff'g *Same v. Same*, 16 N. Y. Supp. 107.

*Same—Sureties on bond—Discharge by postponement of sale—Principal liable.*

By the Revised Statutes of the United States (12 Stat. at L.

p. 293) goods left in a United States government bonded warehouse are deemed to be abandoned after three years, if all taxes and penalties due thereon are not paid. The regulations of the treasury department provide that such goods shall be sold on a certain day after the expiration of said three years. Where the secretary of the treasury issued an order postponing such sale and afterward the United States brought an action against the sureties on the bond for the recovery of the deficit existing after the sale, it was *held* that by such postponement the sureties were released. Such postponement of sale had precisely the same result as an extension of credit would have in a case of other sureties. A surety is entitled to have the sale take place on the day specified in the treasury regulations ; a postponement thereof will increase the amount for which he is liable and for which he must look to his principal. With regard to the principal, the case is different. He is liable for the whole duties as importer without limitation of time and irrespective of the goods held as security. *United States v. De Visser*, 10 Fed. Rep. 642.

## H.

*Storage charges—Contract an entirety—Charges not earned until contract fully performed.*

The plaintiff, a warehouseman, agreed with the defendant to store a number of barrels of wine for a definite period of time for a stipulated price per barrel. Prior to the expiration of such time, and while the plaintiff still had a large number of the barrels in his possession, the warehouse and contents were destroyed by fire without negligence or fault on his part. In an action for the storage charges, it was *held* that the plaintiff could not recover because the contract was an entirety ; and as he had not fully performed the same he was not entitled to any part of his storage charges. It appeared from the evidence that the defendant had paid a certain sum in cash on account of such storage charges at the time the agreement was made. It was *held* that although the defendant in his answer did not claim the return of this sum that, nevertheless, the plaintiff was not entitled to retain the same. *Archer v. McDonald et al.*, 36 Hun, 194.

*Same—No implication to reduce storage charges on account of insurance—Custom.*

The plaintiffs, warehousemen, sued the defendant for storage charges due on account of sugar stored. The defendant admitted the storage and the rate thereof and set up an implied agreement, based upon custom, by which he claimed a set-off against such charges on account of sums paid by him for insurance. The defendant alleged that it was a custom in that vicinity to allow to depositors, in reduction to their storage charges, a certain sum for insurance when the goods were stored in a warehouse in which goods of a fibrous nature were stored. It was *held* that the defendant had failed to establish any legal right to the counterclaim as alleged. *Woodruff et al. v. Acosta*, 11 St. Rep. 286.

*Advances by warehouseman to depositor—Usury—Intent a question for the jury.*

It appeared that the plaintiffs, who were warehousemen, loaned money to the defendant who had deposited goods with them and secured the payment of the notes given therefor by the warehouse receipts. The warehouseman agreed to procure the money from another source by the use of his name, it being further agreed that he was to receive compensation for these services. It was *held* that although the facts showed that the plaintiffs' compensation amounted to a usurious rate of interest that, nevertheless, he was entitled to compensation for his services in procuring the money for the defendant although it appeared that the money advanced was in reality money belonging to the plaintiff himself; and further *held*, that it was a question of fact for the jury to determine whether this form of transaction was gone through with for the purpose of covering a usurious transaction. *Linds et al. v. Grant*, 37 St. Rep. 60.

*Same—Action for freight—Custom—Apparent good order.*

By the custom of warehousemen, known and established, they have the right to receive goods from a carrier, if in apparent good order, and advance to the latter his reasonable charges for the carriage of them, and to hold them subject to the lien

of the carrier for the amount thus advanced; and if delivered to the owner without immediate payment, at the owner's request, a suit may be maintained to recover the amount advanced to the carrier, and if the goods have been injured by the carrier, which injury is not apparent or known to the warehouseman, before or at the time of his receiving the goods, the owner must look to the carrier for his damages, and cannot *recoupe* the same in an action by the warehouseman. *Sage et al. v. Gittner et al.*, 11 Barb. 120; *Western Transportation Co. v. Barber*, 56 N. Y. 544.

*Sale for storage charges—Agreement.*

The right given to warehouseman (Laws, 1883, ch. 421) to sell goods for storage charges when one year's storage is due, may be altered by special agreement between the parties. *State Trust Co. v. Casino Co.*, 5 App. Div. 381.

*Lien—Given only to warehousemen.*

The lien of a warehouseman for his charges is governed by ch. 526 of the Laws of 1885 (see also ch. 418, Laws of 1897) by the terms of which act, in order to be entitled to a lien, a person must be engaged regularly in the business of storing goods, wares and merchandise for hire. A person not so engaged does not come within the terms of the statute. *Merritt v. Peirano*, 10 App. Div. 563; *In re Kelly*, 18 Fed. Rep. 528.

*Same—Must sell goods within a reasonable time after expiration of the year.*

After there has been a default in the payment of storage charges and one year has elapsed, a warehouseman must sell the goods for such charges within a reasonable time. He has no right to keep the goods for an indefinite period allowing his charges to increase. Although the statute is not mandatory and does not require the warehouseman absolutely to sell at the expiration of the year, nevertheless the rights and duties of the contracting parties are fixed by fundamental principles of law which do not depend upon the statute. Therefore, a warehouseman cannot unreasonably neglect to avail himself

of his rights of sale after the same has accrued. *Morgan v. Murtha*, 18 Misc. 438, reversing *Same v. Same*, 17 Misc. 292.

*Same—Right to retain undelivered portion of goods for storage due on entire lot.*

A warehouseman has a lien upon goods remaining in store, which are part of a large quantity of goods originally stored, for the storage charges due upon all of the goods. *Schmidt & Webb v. Blood & Green*, 9 Wend. 268.

*Same—General and not specific—May hold goods for all legal demands for storage against the owner—Sec. 1. ch. 526, Laws of 1885, construed.*

By sec. 1, ch. 526, of the Laws of 1885, it is provided that a warehouseman or person lawfully engaged in the business of storing property for hire shall have a lien thereon for his storage charges and for moneys advanced by him for cartage, labor, weighing and coopering paid on goods deposited and stored with him, the statute extends such lien to all legal demands for the above which he may have against the *owner* thereof. It was held that the warehouseman has a general lien on any and all goods which he may have in his possession for any and all legal charges which he may have against the owner of such goods for storage or for money advanced for the purposes specified in the statute. *Stallman & Fulton v. Kimberly & Johnson*, 53 Hun, 531, aff'd 121 N. Y. 393, this case followed in *Kaufman v. Leonard et al.*, decided in Wayne County Circuit Court (Michigan), May, 1903, not yet reported; *Baumann v. Post*, 26 Abb. N. C. 134. See note on liens and the effect of the act in 23 Abb. N. C. 245.

*Same—Warehouseman's lien subordinate to rights of mortgagee under chattel mortgage.*

Where one mortgaged his furniture, the mortgage having been duly recorded as required by statute, and had made default in the payment thereof, and, further had removed the furniture and stored the same contrary to the terms of the mortgage, it was held, in an action by the mortgagee against the warehouseman, that the lien of the former was superior to that

of the latter. It was contended in behalf of the warehouseman that by sec. 1, ch. 526, of the Laws of 1885, warehousemen were given a specific lien upon goods stored with them. The court stated that it was true that a specific lien was given by the act and that a general lien was also given thereby, but that there was nothing in the statute which was intended to give a warehouseman a lien upon goods belonging to another, stored by a stranger in fraud of the true owner's rights. *Baumann v. Post*, 26 Abb. N. C. 134; *Eisler v. Union Transfer and Storage Co.*, 16 Daly, 456; *Baumann v. Jefferson*, 4 Misc. 147; *Banfield v. Haeger*, 13 J. & S. 428.

*Same—When warehouseman's lien superior to rights of mortgagee under chattel mortgage.*

Where the mortgagee under a chattel mortgage had failed to refile the mortgage within thirty days prior to the expiration of the first year, and the goods were stored with a warehouseman, it was held that the lien of the latter for his storage charges was superior to that of the mortgagee. *State T. Co. v. Casino Co. et al.*, 5 App. Div. 381.

*Same—Same—Chattel mortgage must be filed within thirty days before expiration of year.*

Where a warehouseman held goods on storage which had been mortgaged and the mortgage had been recorded forty-eight (48) days before expiration of the year and not within thirty (30) days, as required by the statute, it was held that such refiling was absolutely nugatory and that the lien of the warehouseman for his storage charges was superior to that of the mortgagee, and that the goods could be sold by the former for such charges. *Industrial Loan Association v. Saul*, 34 Misc. 188.

*Same—Purchaser taking with notice thereof.*

A warehouseman, having in his possession a large quantity of oil upon which he had made advances, was instructed by the general owner to deliver the same to a purchaser thereof. The warehouseman was to receive the payment from the purchaser out of which he was to first pay all of his advances. The purchaser received and paid for part of the goods and when the

balance was sent to him stated that as the general owner was indebted to him, he had paid himself out of the price of the goods and held the balance subject to the order of the warehouseman. In an action to recover the full price of the goods, it was *held* that the warehouseman was entitled thereto; that the purchaser took with constructive if not actual notice of his lien for advances and charges and that he was bound to pay the same. *Carrington et al. v. Ward et al.*, 71 N. Y. 360.

## I.

*Commingling of goods—Valid sale of a part thereof without segregation.*

A party, owning a large quantity of grain which was stored in mass in his warehouse, sold a portion thereof and gave to the purchaser his warehouse receipt acknowledging that he held, subject to the order of the vendee, the number of bushels of grain purchased. The vendor owned other grain in the warehouse with which the grain sold was mingled and there was no separation made at the time of the sale nor was it intended by the parties that any such separation should be made. It was *held* that this was a valid sale of the grain represented by such receipt. *Kimberly et al. v. Patchin*, 19 N. Y. 330. See also *Gardiner v. Snydam*, 7 N. Y. 357.

*Same—Contract an executory one—Above case distinguished.*

The defendants, having a large quantity of oil in their warehouse, agreed with the plaintiff for the sale thereof and delivered to him a bill of sale in which it was stated that they had received payment therefor by a note at three months. The bill also stated that the oil was to be delivered when called for, subject to his charge for storage, and the quality of the oil to be like a sample which was then delivered. The plaintiffs paid the note when it became due and subsequently demanded the oil which when offered proved to be of an inferior quality and twelve hundred gallons less than the amount called for. It appeared that the loss was due to leakage and that the deterioration in quality was due to the same cause. There was no separation of the oil from that of a large quantity stored nor was there any request for such separation. It was contended

in behalf of the defendant that the doctrine of the case of *Kimberly et al. v. Patchin*, 19 N. Y. 330, applied; that the contract was one of sale; that the plaintiff was liable for the deterioration and loss after the title had vested in him. It was *held* that the present case was distinguished from *Kimberly v. Patchin*, in that there was a delivery of a receipt in the latter case, in lieu of a manual delivery of the grain, and that there was no such attempt in the present case to constitute the defendant bailee for the plaintiff. *Foote et al. v. Marsh et al.*, 51 N. Y. 288.

*Substitution of other property—A contract for such substitution held not contrary to any statute of this state.*

The owner of certain bales of burlap stored the same with a warehouseman and took negotiable receipts therefor. At the time he requested that the warehouseman refrain from placing on the receipts any identification marks for the reason that he would subsequently desire to substitute other bales of burlap for those then deposited. In an action brought by the pledgee of the receipts against the owner of the burlap, it was *held* that the agreement providing for the substitution of other burlap for that originally deposited was a valid one, that no statute was violated thereby and that there was no apparent reason for deeming it against public policy for a warehouseman to make such an agreement for the substitution of goods. *New York Security & Trust Co. v. Lipman*, 91 Hun, 554.

#### L.

*Replevin—Improper delivery to defendant in replevin suit—Warehouseman liable for.*

A warehouse company, pursuant to an order obtained under ch. 633 of the Laws of 1895, delivered to the sheriff property which had been formerly stored with it by the defendant in an action of replevin. It appeared that prior to the service of the order on the warehouseman that it had issued a receipt to a third party as the owner of the goods in accordance with an order of the defendant. It was *held* that the delivery to the sheriff of the goods under such circumstances attempted to deprive such third party of his property without due process of law; that the warehouse company was liable to such third

party for this wrongful delivery for it was its duty to have notified him of this order so that he might protect the goods himself. The order in the case was for the delivery to the sheriff of any property *belonging to the defendant* and if the warehouseman had at the time no property belonging to such defendant the order became a nullity and might safely have been disregarded. *Whitman et al. v. Kleimann et al.*, 24 Misc. 554.

#### M.

##### *Pledge—Unauthorized sale by pledgee, conversion.*

Where a pledgee of property sells the same without the authority of the pledgor, such sale constitutes a conversion and the transaction operates as a payment of the debt to the extent of the value of the property. If such value exceeds the debt the pledgees are liable for the market value of the property converted, less the amount of the debt. *Kilpatrick v. Dean et al.*, 3 N. Y. Supp. 60, aff'd 4 N. Y. Supp. 708.

##### *Same—A factor may pledge.*

By the Factor's Act of this state, a factor in possession of the goods and having the necessary muniments of title may pledge the same as validly as the owner thereof. *Brooks v. Hanover Nat. Bank*, 26 Fed. Rep. 301.

#### N.

##### *Injury to goods—Liability for when goods subsequently destroyed.*

A warehouseman is liable for the negligent injury of goods stored with him for hire, though it appear that after the happening of the injury, the goods were destroyed without his fault, and that they must have been so destroyed even if no damage had previously occurred. *Powers v. Mitchell*, 3 Hill 545.

##### *Loss by fire—Negligence must be proven—Burden of proof always on plaintiff.*

Where an action is brought against a warehouseman for the value of grain stored with him, and the defendant shows that the destruction of the goods was caused by fire, the burden of proof remains upon the plaintiff to show that the fire was caused

by the negligence of the defendant. While it is true that a demand upon a warehouseman for goods stored with him met by an unexplained refusal constitutes a *prima facie* case of conversion against him, this rule does not apply where the warehouseman alleges that the goods were destroyed by fire, for if the fire was not due to his negligence or fault he is not liable for the loss resulting therefrom and the plaintiff having alleged negligence in his complaint is bound to prove the same. *Liberty Ins. Co. v. Central Vt. R. R. Co. et al.*, 19 App. Div. 509; *Claflin v. Meyer*, 75 N. Y. 260; *Lamb v. Camden & Amboy R. R. & T. Co.*, 46 N. Y. 271; *Grieve v. N. Y. C. & H. R. R. Co.*, 25 App. Div. 518.

*Same—Negligence question for the jury.*

A common carrier was sued for the destruction of property which he held in the capacity of warehouseman. It appeared that the building in which the property was stored was destroyed by fire and, in spite of the fact that the plaintiff offered testimony to prove negligence on the part of the defendant, the trial court granted a nonsuit. The evidence as to the negligence of the defendant was as follows: It appeared that the defendant had an office in one corner of the building which was used as a warehouse and that in such office there was a small stove; that the woodwork in close proximity to the stove was charred and that on a previous occasion the office had caught fire from a live coal which had dropped out of the stove. Further, that an employee of the defendant had requested his superiors to have a new stove placed in the office stating that the stove there was dangerous and that this request had not been complied with, and finally that the fire originated in the office near the stove. It was *held* on appeal that these facts should have gone to the jury to determine whether or not the defendant was guilty of negligence. *Grieve v. N. Y. C. & H. R. R. Co.*, 25 App. Div. 518.

*Loss by theft—Watching entrance to warehouse—Precautions—Questions for the jury.*

In an action against a warehouseman, for the loss of a large quantity of cigars, the defendant alleged that the cigars had

been stolen from him without his fault and offered testimony to show that he used due care in properly watching the entrances to his warehouse in the day-time, and in having them securely fastened at night. The plaintiff offered testimony to the effect that two witnesses had gone into the warehouse during the day-time without being detected by the defendant or his employees. Upon motion of the defendant a verdict was given for him. On appeal a new trial was ordered on the ground that the plaintiff had a right to go to the jury for their verdict on the question as to whether or not the guard maintained by the defendant was sufficient. *Madan v. Covert et al.*, 10 J. & S. 135.

*Same—Negligence—Burden of proof.*

A warehouseman is not responsible for goods intrusted to him, stolen or embezzled by his storekeeper or servant, unless negligence be shown ; and the onus of showing negligence lies upon the owner. *Schmidt v. Blood*, 9 Wend. 268 ; *Claflin v. Myer*, 75 N. Y. 260, rev'd *Same v. Same*, 11 J. & S. 1 ; *Grossman v. Fargo*, 6 Hun, 310; *Weed v. Barney*, 45 N. Y. 344; *Draper v. Del. & Hud. Canal Co.*, 118 N. Y. 118.

*Negligence—A question of fact—Presumption from nature of transaction.*

In an action against a warehouseman, for the recovery of the value of goods deposited with him, the defendant attempted to excuse his non-delivery by showing that the goods were destroyed in the collapse of his warehouse while the same was being repaired after a fire. It was held that, generally speaking, the burden of proof was on the plaintiff to show negligence on the part of the defendant but that there are some instances where an accident is shown that negligence will be presumed from the nature of the accident. That loss may result from fires and thefts and the warehouseman be free from all negligence but in absence of earthquake or other act of God, the collapse of a warehouse presupposes negligence for which the defendant will be liable. *Kaiser v. Latimer*, 40 App. Div. 149.

*Same—Burden of proof on plaintiff throughout.*

In an action against a warehouseman for failure to deliver on demand property intrusted to him, it was *held* to be well settled that the burden of proof rests on the plaintiff throughout the entire case. It is true that when the plaintiff has made out a *prima facie* case by proving the contract of storage, the receipt of the goods and failure to deliver that the warehouseman is liable unless he can show that the damage resulted from acts on his part which were in no wise negligent and for which he was not responsible. The plaintiff, thereupon, must resume his proof and the burden of establishing, by a preponderance of evidence, that the defendant has been negligent. *Mautner et al. v. Terminal Warehouse Co.*, 25 Misc. 729; *Liberty Ins. Co. v. Central Vt. R. R. Co. et al.*, 19 App. Div. 509; *Claflin v. Meyer*, 75 N. Y. 260; *Schmidt & Webb v. Blood & Green*, 9 Wend. 260.

*Same—What the defendant must prove.*

In the case of failure on the part of a warehouseman to deliver upon demand goods intrusted to him, it was *held* that the burden of proof was upon him to establish that he was without fault after demand and refusal and that he was bound to show that he exercised ordinary care in keeping and preserving the property until called for. *Bank of Oswego v. Doyle et al.*, 91 N. Y. 32, citing *Schwerin v. McKie*, 5 Robt. 404, aff'd 51 N. Y. 180; *Burnell v. N. Y. C. R. R. Co.*, 45 N. Y. 184.

*Same—Same—Defendant must give some account of property.*

A defendant, liable as a warehouseman, must give some account of the property intrusted to his care, which he fails to deliver on demand, before he can cast upon the plaintiff the burden of proving him negligent. *Bush v. Miller*, 13 Barb. 481.

*Same—Misdelivery—Conversion.*

An action of trover was brought against a warehouseman for his failure to deliver property intrusted to him, on demand of the owner. The case was tried and submitted to the jury upon the assumption that the property had been taken from the possession of the defendant by some person other than the owner. The jury found that the property had been *delivered*

to such person by the mistake or negligence of the defendant; that is, by his act, not by his mere omission. It was *held* that this constituted a conversion of the property for which the defendant was liable. *Williard v. Bridge*, 4 Barb. 361; *Pashinska v. Selt*, 20 Misc. 665.

*Same—Same—Liability.*

Warehousemen are not only liable for losses occasioned by their negligence but also for those which arise from innocent mistakes in the delivery of goods to persons not entitled to receive them. *Bank of Oswego v. Doyle et al.*, 91 N. Y. 32.

*Cold storage—Fruit ruined by temperature becoming too low—Not entitled to storage charges—Liability for damages.*

The plaintiff, a warehouse company, brought an action for storage charges against the defendant who had stored a quantity of fruit in the former's cold storage rooms. The defendant counterclaimed, alleging and proving that the fruit was damaged and rendered useless while being kept at too low a temperature and judgment was rendered for the defendant in amount of his damages. On appeal this judgment was affirmed, the court holding that it appeared clearly from the testimony that the plaintiff was to store the fruit at a temperature ranging from thirty-five to forty degrees and that by his failure to do this he became liable to the defendant in damages which the latter had sustained by reason of this breach of contract. *Greenwich Warehouse Co. v. Maxfield*, 8 Misc. 308.

*Same—When owner has access to cold storage rooms—Knowledge of their temperature.*

The plaintiff stored a large quantity of eggs in the cold storage warehouse of the defendant, and it appeared from the testimony that there was no express contract of storage made between the parties. It also appeared that the storage was to be temporary and that the plaintiff at all times had access to the warehouse where the eggs were deposited and from time to time inspected the eggs and handled them, thus being possessed of the information, or means of information, as to the daily temperature of the storage rooms. Further that a large quan-

ity of the eggs amounting in value to several hundred dollars were ruined owing to a rise in temperature in the rooms in which they were stored. It was *held* under such circumstances that the defendant was not liable and that the plaintiffs acted on their own judgment as to the capabilities of the warehouse in the matter of temperature. The court further *held* that the plaintiffs had failed to make out any contract by which the defendant agreed to keep the temperature of the rooms at a uniform or at a certain minimum degree. *Sunderland et al. v. Albany C. S. & W. Co.*, 55 App. Div. 212.

*Same—Meaning of term defined.*

The phrase "cold storage" used in a warehouse receipt is indefinite and ambiguous in its meaning where the receipt simply states that the goods are to be kept in "cold storage." Where, therefore, the degree of temperature at which the goods were to be kept was of highest importance in the matter of their preservation, evidence would be received to show that this term meant below freezing, or, that it may have meant a temperature cold enough to preserve the goods. *Behrman v. Linde*, 47 Hun, 530.

*Evidence—Receivable to show special value of lost property.*

In an action against a warehouseman for damages for the loss of certain sheet music stored with him, it was *held* that evidence showing a special value of the sheet music to the plaintiff, in that it contained notes thereon made by her husband, was properly received. *Leconcini v. Post*, 37 St. Rep. 255.

*Same—Instructions to jury—Where alleged to be stolen the loss by such theft must be established.*

The defendants, who were liable as warehousemen, had a large quantity of cigars stored with them, and upon failure to deliver upon demand, the plaintiff instituted suit against them. The defendant attempted to show that the cigars in question had been stolen from him without his fault. The court instructed the jury that the defendant must prove that the loss was immediately connected with the theft, and, further, that in spite of such theft he had exercised ordinary care, or that the

loss occurred without negligence on the part of the defendant. *Schwerin et al. v. McKie et al.*, 51 N. Y. 180; *Claflin et al. v. Meyer*, 75 N. Y. 260, rev'g *Same v. Same*, 11 J. & S. 1; *Madan v. Covert et al.*, 10 J. & S. 135; *Williamson v. N. Y., N. H. & H. Ry. Co.*, 22 St. Rep. 431; *Leonecini v. Post*, 37 St. Rep. 255; *Lichenstein v. Jarris*, 31 App. Div. 33; *Abecasis v. Gray*, 11 J. & S. 573; *Oderkirk v. Fargo*, 61 Hun, 418; *Liberty Ins. Co. v. Central Vt. R. R. Co.*, 19 App. Div. 509.

## 0.

### *Measure of damages.*

Where a warehouseman converts to his own use the property intrusted to his care by an unauthorized sale of the same, the measure of damages is the value of the property at the time of its conversion less any sum which may be properly due the warehouseman for charges or advances. *Kilpatrick v. Dean et al.*, 3 N. Y. Supp. 60, aff'd 15 Daly, 182.

### *Same—Interest allowable from date of demand.*

A warehouseman had failed to deliver to his depositor certain cigars stored with him upon demand being made therefor. In the trial of the action, the warehouseman was found to be liable for their loss. In regard to the claim of the plaintiff for interest on the value of the goods from the date of demand, the court said: "The cigars in question were the property of the plaintiffs, and when they demanded them they were entitled to one of three things: To the goods, the pay for them, or a valid excuse for not delivering them. The defendants having failed to do either; and having thus occasioned the plaintiffs the loss of interest upon the value of their property without a valid excuse, they cannot justly complain of being charged with interest." *Schwerin et al. v. McKie et al.*, 51 N. Y. 180.

### *Same—Purchase price does not always govern.*

In ascertaining the amount of damages resulting from the loss of goods stored with a bailee, the purchase price is not always a criterion of the value thereof. There may be circumstances which would render such a criterion manifestly unfair,

hence other evidence will be received. *Jones v. Morgan*, 24 Hun, 372; aff'd 90 N. Y. 4; *Leconcini v. Post*, 37 St. Rep. 255.

P.

*Warranty—Representations that warehouse is frost proof—Opinion.*

In an action against a warehouseman to recover the value of certain bulbs alleged to have been ruined by frost while stored, the evidence adduced by the plaintiff, although not conclusive, was to the effect that the defendant had stated that his warehouse was free and safe from frost, that the bulbs would keep therein and that the warehouse was as frost proof as brick, iron and mortar could reasonably be expected to make it. It was held that the charge to the jury to the effect that if defendant stated as a matter of fact that his warehouse was as frost proof as brick, iron and mortar could reasonably be expected to make it, and that as said warehouse was not so frost proof, that the plaintiffs were entitled to recover, was error. That even though evidence was conclusive that the defendant had made such a statement that it would have been at most merely an expression of opinion as to what could be expected of brick, iron and mortar, and that it was not a warranty that all goods stored therein would not be injured by frost. *Hallock et al. v. Mallett*, 23 R. & S. 265.

*Same—Advertisement containing false statements as to the construction of the warehouse—Liability of warehouseman therefor.*

The plaintiff brought an action against the defendant, a warehouseman, for the loss of her goods by fire while stored. Testimony showed that she had been induced to store her goods in this warehouse by representations contained in a circular issued by the warehouseman which stated among other things that "no expense has been spared in supplying light, ventilation and protection against the spread of fire, the exterior being fireproof, and interior being divided off by heavy brick walls, iron doors," etc. The evidence showed that the warehouse had caught fire from an adjacent building and that the fire had been communicated to the warehouse and its contents through wooden window frames. The plaintiff referred to the

Act of 1874, ch. 547, sec. 5, in that it required certain structures, among which are warehouses, to have doors, blinds and shutters made of fireproof material on every window and opening above the first story. It was *held* that in view of the evidence that the window frames of the warehouse were wooden; that at the outside of the windows there were no shutters and that the cornices were of wood covered with tin, the statements contained in the circular were false. That the meaning of the term fireproof was well known and that it conveyed no other idea than that the material of which an article was constructed was incombustible. That the statement in regard to the construction of his warehouse was not an expression of opinion for which he would not be liable but was a statement of fact. That being false he was liable for the consequences therefor, being chargeable with knowledge of the conditions about his warehouse. *Hickey v. Morrell*, 102 N. Y. 454, rev'g *Same v. Same*, 12 Daly, 482. See *Gruel v. Yetter*, 26 Misc. 851.

#### Q.

*Warehouse receipt—When goods not actually in store—Act construed.*

Where a receipt was issued and all of the goods represented thereby were not actually in store and the receipt was transferred or pledged, it was *held* that the receipt did not thereby become void and that the person taking the same, either as purchaser or pledgee, took title to all goods actually in store at the time of the transaction. *McCombie et al. v. Spader*, 1 Hun, 193.

*Same—Same—Receipt issued to one not real owner—Purchaser of receipt with notice.*

A warehouseman issued a receipt individually to a representative of a firm to which certain goods belonged, but such goods had not at the time of issuance of the receipt been received in store by the warehouseman. The representatives of the firm sold the receipt and the purchaser subsequently sold the same for value to the warehouseman. The property represented by the receipt had, in the meantime, been purchased by one who had no notice of these transactions. It was *held* that the pur-

chaser of the goods took a good title thereto and that the receipt which was issued when the goods were not actually in store and to one who was not in reality the owner of the goods and had no authority to so act for the owner, was void as to the purchaser of the goods in good faith. *Delaware, L. & W. R. R. Co. v. Corwith et al.*, 37 St. Rep. 728.

*Same—Refusal to deliver—Identification.*

Household furniture was stored with the defendant warehouseman but no receipt given at the time of the storage. Subsequently the depositor executed a bill of sale to the plaintiff for the furniture and sent an agent with the vendee to the warehouse. At this time, the defendant warehouseman gave to such agent a receipt in the name of the vendor in which it was stated that the furniture would be delivered only upon the written order of the depositor or proper identification. The agent of the vendor, who was present at the warehouse with the vendee, identified such vendee but the warehouseman refused to deliver without written order of the vendor. *Held* that the refusal was unjustifiable, that aside from the identification that there was considerable doubt whether or not the clauses referring to delivery of the goods upon the written order and to identification were not merely notices and not part of the contract. Therefore, the dismissal of the complaint by the trial court was reversed on appeal. *Willner v. Morrell*, 8 J. & S. 222.

*Same—Implication that corn sold is marketable corn—Parol evidence inadmissible.*

The defendant contracted to sell a quantity of corn to another and for the purposes of delivery deposited the same in a warehouse and took therefor a receipt in his own name. *Held* that in spite of the fact that the defendant by this transaction intended to deliver the corn to the purchaser, that, in reality, the title to the corn remained in him. Further, that a contract to sell a quantity of corn means marketable corn and that parol evidence of conversations between the parties is not admissible to vary the terms of the warehouse receipt issued to the defendant. *Peek v. Armstrong*, 38 Barb. 215.

*Same—Valid tender may be made by.*

A tender of the warehouse receipt, and an offer to pay charges due thereon, is a valid tender to deliver property under a contract of sale. *Hayden v. Demets*, 53 N. Y. 426, aff'd 2 J. & S. 344.

*Same—Warehouseman not bound by description contained in the receipt.*

A warehouseman received in storage a number of barrels said to contain Portland cement. He issued receipts therefor in which it was stated that he had stored in his warehouse a number of barrels containing such cement. It afterwards appeared that the barrels did not contain cement of the grade mentioned but were filled with a sandy substance which was practically worthless. The warehouse receipt had been pledged to secure a loan and the plaintiff had obtained possession thereof from the pledgee after having paid the note for which the receipt was given, he being the guarantor thereon. It was contended in behalf of the plaintiff that if the goods were not Portland cement as represented in the receipts that such receipts were untruthful and therefore issued in violation of the first section of the Factors Act of 1858 as amended by that of 1866 (ch. 326, Laws of 1858; ch. 440, Laws of 1866). It was held that this act did not apply to such a case; further that the character of the representation made by the warehouseman on the receipt was nothing more than that he had actually received a certain number of barrels of what purported to be Portland cement packed as such cement was usually packed and bearing the outward indicia of such article; that the statement as to the contents of the barrels received was in no sense a warranty by the defendant that such contents were actually as described, and that the fault lies wholly with the plaintiff, who placed a degree of faith in the correctness of description contained in the receipt which was totally unwarranted from the nature of the transaction and for which the defendant ought not to be held responsible. *Dean et al. v. Driggs*, 137 N. Y. 274, distinguishing *First Nat. Bank of Chicago v. Dean et al.*, 137 N. Y. 110; *Myer v. Peck*, 28 N. Y. 590; *Armour v. Ry. Co.*, 65 N. Y. 101; *Miller v. Hannibal & St. Jo. Ry.*, 24 Hun, 607.

*Same—Estoppel—Statement in receipt that liquor is stored in “free warehouse” binding on warehouseman.*

The plaintiff became the holder of a negotiable warehouse receipt for a quantity of brandy. Printed on the top of the receipt was a list of warehouses operated by the defendant. The list also stated which were “free warehouses” and which were bonded, and it further appeared that the brandy represented by this receipt was stored in one of the warehouses which was stated to be free. It appeared that in the parlance of this business the term “free warehouse” means one not bonded or where liquor is stored upon which the government tax has been paid. It afterward appeared that in fact the brandy represented by the receipt was stored in a bonded warehouse and that it could not be withdrawn except upon the payment of the government tax thereon. *Held* that the plaintiff was a *bona fide* holder of the receipt within the meaning of the warehouse laws of the state, and that he was entitled to the possession of the brandy upon the payment of storage charges only and that the defendant was bound to pay the government tax due thereon, being estopped by the statement on the receipt that the brandy was in a free warehouse. *First Nat. Bank of Chicago v. Dean et al.*, 137 N. Y. 110.

*Same—Negotiability.*

Warehouse receipts are made negotiable in this state by statute. The indorsement and transfer thereof vests the title to the merchandise represented in the transferee. *Brooks v. Hanover Nat. Bank*, 26 Fed. Rep. 301.

*Same—Act construed—Bona fide holder.*

It was the intention of the legislature by the act of 1858 (sec. 6, ch. 326, Laws of 1858) that warehouse receipts, upon which the word non-negotiable was not plainly written or stamped, were to have certain negotiable qualities imparted to them. *Held* that it followed from such act that a *bona fide* transfer, in the manner specified in this law with intent to transfer the title to the property, vests such title in the transferee together with all the remedies of the transffor against the

warehouseman for failure to make due delivery. *Whitlock et al. v. Hay*, 58 N. Y. 484; *Brooks v. Hanover Nat. Bank*, 26 Fed. Rep. 301.

*Same—Negotiability—Not negotiable the same as bills and notes.*

The negotiability of a warehouse receipt is not the same as that of a promissory note or bill of exchange. By the indorsement and delivery of such a receipt the indorsee for value is entitled to hold the property represented thereby under the conditions stated in the warehouse law of this state. Unless there has been fraud or neglect in the issuance of the receipt the holder is entitled to no more than the original property deposited. *Dean et al. v. Driggs*, 137 N. Y. 274.

*Same—As collateral—Liability of pledgee for storage charges—Must take possession of the goods—What constitutes possession a question of fact.*

Where a warehouse receipt has been used as collateral security to secure the payment of a note and the pledgee surrenders the receipt to one who was guarantor on the note, and who paid the same, it was held that by thus obtaining possession of the receipt such guarantor did not thereby become liable for the payment of storage charges, and that in order to hold him so liable it would be necessary to show that he did some act from which it could be shown that he took possession of the goods. It appeared from the evidence that one in the employ of such holder of the receipt had sent his clerk to the warehouse to examine the property. In reply to an inquiry made by an employee of the warehouseman asking whether or not a bill should be sent for the storage charges, such clerk stated that they had better send such a bill. It was further held that this evidence was not sufficient upon which to direct the verdict and that the question was one of fact as to whether or not the holder of the receipt had taken possession of the goods, and that the person who becomes the holder of a warehouse receipt as collateral security does not by reason of his having possession of the receipt become bound for the storage charges due upon the property. He has a qualified title to the property and if he so elects may reduce the property to possession by the

payment of storage charges. *Driggs v. Dean*, 167 N. Y. 121, rev'd *Same v. Same*, 37 App. Div. 630.

*Same—Same—Effect of substitution of other goods.*

The plaintiff trust company brought an action against the defendant on certain warehouse receipts which had been pledged with it as collateral security for the payment of a loan. One of the defendants, the owner of the goods, had stored the same in a warehouse and had agreed with the proprietor thereof that the negotiable receipts which were to be issued therefor should contain no marks by which the particular goods stored could be identified, the object being that the owner desired to substitute other goods which he subsequently did. At the time of the default in the payment of the note for which the warehouse receipt was pledged, it appeared that the quantity of goods remaining in the warehouse and belonging to the original owner was less than that called for by the receipt and that the full amount was made up from goods of a similar character which had been intrusted to the owner as factor and which he had stored along with his own goods; that subsequent to this transaction the warehouseman issued one receipt covering all of the goods then standing in the name of the owner, which receipt was taken by the plaintiff as collateral in lieu of the former receipts held by it. It was held that the agreement between the warehouseman and the owner as to the substitution of other goods was a lawful and proper agreement; that the pledge made of the goods which were held as factor was valid under the Factors Act of this state, and that the plaintiff was entitled to recover for all loss and advances made by it against all of the property stored. *New York Security & Trust Co. v. Lipman*, 91 Hun, 554. See also *Blydenstein et al. v. New York S. & T. Co.*, 15 C. C. A. 14; *Same v. Same*, 59 Fed. Rep. 12.

*Same—Delivery of goods without return of receipt—Section 633 of the penal code construed.*

An owner of goods shipped the same to a bank, care of the plaintiff warehouseman. When the goods were received by the plaintiff they were stored and a receipt issued to the owner

therefor. The owner thereupon attached to the receipt a draft drawn on the defendant at ninety days' sight, which draft was duly accepted and the owner discounted the same at the bank. The defendant was to have possession of the goods upon payment of the draft and the delivery to him of the receipt. The defendant, after accepting the draft, had taken possession of the goods, without authority from the plaintiff. The defendant failing to pay the draft when due, the plaintiff paid the same and procured the warehouse receipt. In an action for the amount of the draft, it was contended that the plaintiff was not entitled to recover on the ground that he had parted with the custody of the goods in violation of sec. 633 of the Penal Code which forbids warehousemen to deliver property unless the receipt be surrendered. It was *held* that the finding of the jury that the goods were taken from the plaintiff by the defendant, without permission of the former, was conclusive and that in such a case the above section of the Penal Code does not apply. *Burnham v. Cape Vincent Seed Co.*, 142 N. Y. 169, aff'd 49 St. Rep. 918.

*Same—Same—When warehousemen liable.*

In an action by the plaintiff bank against a warehouseman, to recover the value of a quantity of wheat and oats represented by certain warehouse receipts, the following procedure was the custom between the parties: A dealer in grain would store the same with the defendant and procure therefor his receipt; when he desired to sell the same would draw his check on the plaintiff bank and attach his receipt thereto, the plaintiff thereupon honoring the receipt. While the receipt was still in the hands of the plaintiff bank, the warehouseman would deliver the grain to such dealer who would in turn deliver it to the railroad for shipment. The railroad would then issue its bill of lading to the dealer for the grain received and the dealer would then present the bill of lading to the bank, obtain the warehouse receipts and deliver them to the defendant. In the instance from which the cause of action arose, the dealer, although he had received the bill of lading from the railroad company, failed to deliver it to the plaintiff. It was contended in behalf of the defendant that there was a waiver on the part

of the plaintiff of the benefits of the warehouse act. It was *held* that there was not sufficient evidence in support of such waiver to warrant the submission thereof to the jury; and that if the defendant saw fit to intrust the bill of lading to the dealer, he did so at his peril; finally that the arrangement on the part of the plaintiff to hold the receipt until it had received the bill of lading did not amount to a waiver of the provisions of the statute. *First Nat. Bank of Penn Yan v. Bruen*, 23 Weekly Dig. 90.

*Same—Receipt of grain and issuance of warehouse receipt without notice of claim for advances—Warehouseman not liable.*

One engaged regularly in the business of a warehouseman issued a receipt for grain stored with him in the name of the master of the vessel who delivered the grain. At the time of the issuance of this receipt the warehouseman had no notice of any advances made against the grain. It appeared that the grain had been shipped to the order of the consignor, care of the consignee, the former's broker. The master of the vessel indorsed the receipt to the broker who had previously pledged the bill of lading in order to obtain funds with which to pay the draft attached thereto, being for the price of the grain. The broker afterward negotiated the receipt to several parties who brought an action against the warehouseman for the conversion of the grain. It was *held* that the transaction was one of mere bailment and imposed no further duty upon the defendant than to restore the property to his bailor when no intervening rights of others had been asserted. The defendant had no notice of the transaction with the bill of lading and there were no facts brought to his attention from which he could be charged with such notice. *Hazard v. Abel, Prest., etc.*, 1 Sheld. 364.

*Same—Delivery upon, without notice of claim.*

A warehouseman received a large quantity of grain and, under instructions from the consignor, issued a receipt in the name of the consignee. It appeared that the consignee, who was a purchaser of the grain, had not paid therefor and, in fact, was at the time insolvent, but the defendant warehouseman had no notice of this nor any notice that his consignor

had any claim against the consignee. The consignee pledged the receipt to a third party and secured advances thereon. In an action brought against the warehouseman, it was held that the issuance of the receipt by him under the above stated facts was proper and that he was in no wise liable for claims of the consignor against the goods of which he had no notice and that the pledge thereof to the third party was a valid pledge. *Hoyt v. Baker*, 15 Abb. Pr. (N. S.) 405; *Hazard v. Abel*, 15 Abb. Pr. (N. S.) 413.

*Same—Receipt issued by superintendent to owner of factory not a warehouse receipt.*

The owner of a factory, in which was stored a large quantity of oil, procured from his superintendent a receipt in form similar to warehouse receipts, in which it was stated that the oil was deliverable to the order of such owner. The receipt was subsequently pledged and there was an attachment levied upon the oil in an action against the owner of the factory. Held that such receipt did not constitute a warehouse receipt within the meaning of the warehouse law, title did not pass thereby, and that the execution levied by the sheriff upon the oil was validly levied. *Yenni v. McNamee*, 45 N. Y. 614.

*Same—Fraudulently issued by president of a warehouse company in his own name—Used as collateral security—Facts constituting notice—Warehouseman not estopped to show goods are not actually in storage—Evidence.*

The plaintiff, a national bank, loaned money to the president of the defendant warehouse company upon a receipt for a quantity of cotton, as collateral security. The warehouse receipt was negotiable and in favor of the president of the company individually and was signed by him as president. The note given for which the receipt was collateral was not paid and the bank instituted an action against the defendant warehouseman to recover the cotton represented, or its value. It appeared that the by-laws of the defendant authorized either its president or its treasurer to sign warehouse receipts. It was held that an application of the doctrines of principal and agent to such by-laws could not cause them to be construed

as to authorize the president or treasurer to issue a receipt in his own name; that the receipt itself being issued in the name of the president personally and signed by him as president was sufficient to put the plaintiff on notice and that the plaintiff was not a *bona fide* holder of the receipt. Further that the defendant was not estopped to show that the goods mentioned in the receipt were not actually in store. It was contended in behalf of the plaintiff that a new trial should be granted because at the trial of the case the plaintiff was not permitted to introduce evidence as to a conversation held between its officers and the president at the time of the transaction in question. It was held that only the declaration of one who is at the time acting in the capacity of agent can be receivable as admissions against his principal. *Bank of New York N. B. Association v. American Dock & Trust Co.*, 143 N. Y. 559, aff'g *Same v. Same*, 70 Hun, 152; *Corn Exchange Bank v. American Dock & Trust Co.*, 149 N. Y. 174, rev'g *Same v. Same*, 78 Hun, 400.

*Same—Same—Same—Inquiries made by a holder of the receipt—Implied authority to officer to issue receipts in his own name—Questions for the jury.*

Where a case arose on a similar transaction to those set forth above but it further appeared that the plaintiff bank had made inquiries of another officer of the defendant company as to whether or not the president had authority to issue receipts in his own name and was told that he had such authority, and that on four or five occasions the president had issued such receipts and they had been honored by the defendant company by a delivery of the goods represented. The plaintiff was not permitted to go to the jury on the question as to whether or not such actions on the part of the defendant did not estop it to deny that its president had authority to issue receipts in his own name, but upon motion of the defendant a verdict was directed in its favor. It was held on appeal that as the verdict had been directed against the plaintiff it was entitled to the most favorable inferences which might be drawn from the evidence. That where a principal permits its agent to do an act beyond his authority without objection, he is liable to those who were not aware of any want of authority to the same ex-

tent as if the necessary power had been directly conferred. While it did not appear from the evidence that the directors had knowledge that its president had on several occasions issued receipts in his own name and such receipts had been honored, nevertheless, it was a question for the jury to determine whether the directors *ought* not to have known, under all the circumstances, that such transactions had taken place. Therefore, according to stipulation contained in notice of appeal, judgment absolute was directed against the defendant. *Hanover Nat. Bank v. American Dock & Trust Co.*, 148 N. Y. 612, aff'g *Same v. Same*, 75 Hun, 55.

*Same—Parol evidence receivable to explain meaning of term “cold storage.”*

The plaintiff brought an action against the defendant, a warehouseman, to recover the value of certain poultry which was alleged to have been spoiled while in the cold storage rooms of the defendant's warehouse. On the trial of the case the plaintiff offered to prove that the phrase “cold storage” had a significance, in the business in which it was employed, which would require the defendant to keep the poultry at a temperature below freezing. This evidence was ruled out by the court. The plaintiff also offered to prove that there was a verbal agreement made at the time of the storage by the terms of which the defendant agreed to keep the poultry in such a degree of cold as would freeze it and thus preserve it from injury or spoiling while it remained in his warehouse. The court also excluded this testimony. It was held on appeal that the evidence to explain the meaning of the phrase “cold storage” should have been received in accordance with the legal rule that evidence is always admissible to explain meanings of terms used in any particular trade or occupation, when their meaning becomes material in order to construe a contract; and further, that it was manifest from an inspection of the warehouse receipt that it was not made or accepted so as to include the broad ground of the entire contract. The plaintiff did not propose to contradict or vary the receipt but to add to it an attribute of the agreement between the parties defining the

degree of cold agreed upon, which had been omitted from the receipt. *Behrman v. Linde*, 47 Hun, 530.

*Same—Evidence not admissible to show other transactions.*

In an action against a warehouseman it was charged that he had issued a receipt for goods before having them in store. At the trial evidence was admitted, under objection by the defendant, that the defendant, upon another occasion, had given a receipt for other goods before their actual receipt at the warehouse. Held on appeal that the admission of such evidence constituted reversible error. *McCombie et al. v. Spader*, 1 Hun, 193.

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*Taking of land for warehouse—Act authorizing, unconstitutional—Incidental benefit to public not sufficient.*

A company was incorporated for the purposes of affording a basin or harbor for vessels and for the warehousing of merchandise. By a subsequent act of the legislature the company was permitted, in the event that it was unable to ascertain the owner or owners of certain lands after the exercise of reasonable diligence, to condemn the same and acquire title in the manner provided by law for the acquisition of title to lands for railroad purposes. The company sought to condemn lands pursuant to this act; in the proceedings it appeared that the public would be entitled simply to an entrance to the basin constructed by the company and to the use of the center thereof, the surrounding lands to be occupied with private warehouses. The court held that it could not regard such a project as one for a public purpose or use which would justify the delegation to this company of the right of eminent domain; further that the effect of such procedure would be the taking of private property for private use which could never be validly authorized by legislative act, although it might be true that the structure intended to be built on the property sought to be condemned might incidentally tend to benefit the public by affording additional accommodations for business, commerce or manufacture. *Matter Appl'n of E. B. W. & M. Co.*, 96 N. Y. 42.

*Liability of directors—Failure to file annual report.*

The defendants, who were directors in a corporation doing

a general warehouse business, were sued by the plaintiff upon certain notes signed by their corporation under the following circumstances. The payment of such notes was secured by the deposit of a warehouse receipt in a bank from which receipt it appeared that the corporation had a large quantity of grain to its credit in the warehouses of a warehouse association which had issued the receipt. Subsequently, the corporation withdrew the grain from the warehouses of the association and disposed of the same. The notes not being paid by the corporation the warehouse association paid the same, the bank indorsing the receipt and notes in blank. The association thereupon assigned the receipt and notes to the plaintiff who brought suit against the defendants individually on the ground that they were so liable under the laws of the state of New York, it appearing that the corporation of which they were directors had failed to file its annual report as required by law. On the trial verdict was rendered for the plaintiff; a denial of a motion for a new trial was affirmed on appeal. *Bedford v. Sherman et al.*, 68 Hun, 317.

*Same—Charged with duty—Reasonable inspection of the books.*

The directors of a warehouse corporation are chargeable with the knowledge of the entries made on its books in the ordinary course of its business. Such directors are chargeable with the duty of a reasonable inspection of the books and a reasonable supervision of the conduct of the officers. *Hanover Nat. Bank v. American Dock & Trust Co.*, 148 N. Y. 612.

*Liability of stockholders—“Full paid stock” construed—Statute of limitations.*

The words “full paid stock” as used in ch. 701 of the Laws of 1872 do not refer to the whole capital stock of the company but to the stock held by individual stockholders. Where a stockholder has paid in full his subscription to stock, his stock is full paid. There is no liability under this act for debts made after the payment of the capital stock and the recording of the certificate as therein required. In an action brought more than six years after the cause of action had accrued, the statute of limitations was a defense which should have been sustained.

The judgment which was given for the plaintiff was reversed on appeal. *Nat. Park Bank v. Remsen*, 23 J. & S. 144.

*Public warehousemen—Statute prescribing rates for storage, constitutional—Indictment—If such rates be unreasonably low, quare.*

The defendant was indicted under ch. 581 of the Laws of 1888 for the alleged violation thereof in that he charged more than the rate allowed by such law for the elevating of a cargo of grain and for exacting more than the actual cost for shoveling the grain to the leg of the elevator. The defendant contended that the act in question was unconstitutional in that it deprived him of liberty and property without due process of law, contrary to art. 1, sec. 6, of the constitution of the state of New York, and art. 14, sec. 1, of the constitution of the United States as amended. The court *held* that the power of the legislature to regulate the charge for elevating grain, even where the business is carried on by individuals upon their own premises, fell within the scope of the police power of the state as it was an exercise of authority necessary for the internal regulation and government of the state for its public welfare; that the business of elevating grain was one "affected with a public interest," that warehousemen exercise a public business and assume obligations to serve the entire public and that their property, therefore, in a legal sense, is devoted to a public use. *The People v. Budd*, 117 N. Y. 1, aff'd 143 U. S. 517. See *N. D. ex rel. Stoeser v. Brass*, 2 N. D. 482, aff'd 153 U. S. 391; *Munn v. Illinois*, 69 Ill. 80, aff'd 94 U. S. 113.

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NOTE. In the opinion in *The People v. Budd* (143 U. S. 517) the Supreme Court declined to anticipate what its decision might have been had the storage rates prescribed by statute been inadequate. In the first of the above cases to be decided by the United States Supreme Court, *Munn v. Illinois*, two justices dissented; in the second case, *The People v. Budd*, three justices dissented; in the last case, *N. D. ex rel. Stoeser v. Brass*, there were four dissenting justices. See also *State v. Associated Press*, 159 Mo. 410, in which Mr. Justice Sherwood severely criticizes the doctrine of *People v. Munn*; See also the following leading cases: *People v. Walsh*, 117 N. Y. 621. (The report of this case in 22 N. E. Rep. p. 670, contains Mr. Justice Peekham's dissenting opinion.) *Dow v. Beidelman*, 125 U. S. 680; *Los Angeles City Water Co. v. City of Los Angeles*, 177 U. S. 558; *Corington & L. T. Co. v. Sandford*, 164 U. S. 578; *Lake Shore & M. Ry. Co. v. Smith*, 173 U. S. 684; *M. & St. Paul Ry. Co. v. State*, 131 U. S. 418; *Minneapolis E. Ry. Co. v. State*, 134 U. S. 467; *Stone v. Farmers' L. & T. Co.*, 116 U. S. 307; *Smyth v. Ames*, 169 U. S. 466; *Smyth v. Ames*, 171 U. S. 361; *People v. Walsh*, 36 L. ed. 247.

## CHAPTER XXXIII.

**NORTH CAROLINA.****LAWS PERTAINING TO WAREHOUSEMEN.**

An Act relating to warehousemen, authorizing them to give bonds and issue warehouse receipts secured thereby, and prescribing and regulating their powers and duties.

**Corporation authorized by charter to engage in warehouse business may become a warehouseman :**

Sec. 1. *The General Assembly of North Carolina do enact:* That any corporation organized under the laws of this state and whose charter authorizes it to engage in the business of a warehouseman within this state may become a public warehouseman and authorized to keep and maintain public warehouses for the storage of cotton, goods, wares and other merchandise as hereinafter prescribed and upon giving the bond hereinafter required.

Sec. 2. *To give bond—Amount—Conditions.* Every such corporation so organized under the preceding section to become a public warehouse shall give bond in a reliable bond or surety company to the clerk of the court of the county wherein is situated the warehouse of the said public warehouseman, in an amount not less than twenty-five thousand dollars, to be approved, filed with and recorded by the clerk of the said court, for the faithful performance of the duties of a public warehouseman.

Sec. 3. *Injured persons may sue on bond—Liability for costs.* Whenever such warehouseman fails to perform its duty or violates any of the provisions of this act, any person injured by such failure or violation may bring an action in his name and to his own use in any court of competent jurisdiction on the bond of said warehouseman, and in case he should fail in said action, he shall be liable to the defendant for any cost which the defendant may recover in the action.

**Sec. 4. Insurance of stored property—Storage receipts—Non-negotiable receipts.** Every such warehouseman shall, when requested thereto in writing by a party placing property with it on storage, cause such property to be insured; every such warehouseman shall, except as hereinafter provided, give to each person depositing property with it for storage a receipt therefor, which shall be negotiable in form and shall describe the property, distinctly stating the brand or distinguishing marks upon it, and if such property is grain, the quantity and inspected grade thereof. The receipts shall also state the rate of charges for storing the property and amount and rate of any other charge thereon, and also the amount of the bond and name of the company in which the bond is taken, given to the said clerk of the court as hereinabove provided: *Provided, however,* that every such warehouseman shall upon request of any person depositing property with it for storage, give to such person its non-negotiable receipt therefor, which receipt shall have the words "Non-negotiable" plainly written, printed or stamped on the face thereof: *And provided,* that the assignment of said non-negotiable receipts shall not be effective until recorded on the books of the warehousemen issuing them.

**Sec. 5. Title to goods stored, how passed.** The title to cotton goods, merchandise and chattels stored in public warehouses shall pass to a purchaser or pledged (e) by the indorsement and delivery to him of the warehouseman's receipt therefor, signed by the person to whom such receipt was originally given or by the indorsee of such receipt.

**Sec. 6. Where identity to property stored cannot be preserved, receipt a valid title to amount designated thereby.** When grain or other property is stored in public warehouses in such a manner that different lots or parcels are mixed together, or that the identity cannot be accurately preserved, the warehouseman's receipt for any such portion of grain or property shall be deemed a valid title to so much thereof, as is designated in receipt without regard to separation or identification.

**Sec. 7. Warehouseman to keep book of accounts—What to contain—Open to inspection of interested parties.** Every such warehouseman shall keep a book in which shall be entered an ac-

count of all its transactions relating to warehousing, storing and insuring cotton, goods, wares and merchandise, and to the issuing of receipts therefor, which books shall be opened to the inspection of any person actually interested in the property to which such entry relates.

*Sec. 8. Power to sell property after claim for storage one year overdue—Disposal of proceeds—Notice.* Every such public warehouseman which shall have in its possession any property by virtue of any agreement or warehouse receipt for the same, for which a claim for storage is at least one year overdue, may proceed to sell the same at public auction, and out of the proceeds may retain all charges for storage of such goods, wares and merchandise, and any advances that may have been made thereon by him, or them, and the expense of advertising and sale thereof, but no sale shall be made until after the giving of printed or written notice of such sale to the person or persons in whose name the said goods, wares and merchandise were stored, requiring him or them, naming them, to pay the arrears or amount due for such storage, and in case of default in so doing, the goods, wares and merchandise shall be sold to pay the same, at a time and place to be specified in such notice.

*Sec. 9. Notice how served—Return of service—Notice by publication.* The notice required in the last preceding section shall be served by delivering it to the person or persons in whose name such goods, wares and merchandise were stored, or by leaving it at his usual place of abode, if within this state, at least thirty days before the time of sale, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person with an affidavit of the truth of the return, if the party storing such goods cannot with reasonable diligence be found within this state, then such notice shall be given by publication once a week for two successive weeks, the last publication to be at least ten days before the time of such sale, in a newspaper published in the city or town where such warehouse is located. In the event that the party storing such goods shall have parted with the same, and the purchaser shall have notified the warehouseman with his ad-

dress, such notice shall be given to such person in lieu of the person storing the goods.

Sec. 10. *Surplus of proceeds of sale, how recorded and disposed of.* Such warehouseman shall make an entry in a book kept for that purpose of the balance or surplus of the proceeds of sale, if any, and such balance of sale, if any, shall be paid over to such person or persons entitled thereto on demand. If such balance or surplus is not called for or claimed by such party or owner of said property within six months after such sale, such balance or surplus shall be paid by said warehouseman to the clerk of the court of the county in which said warehouse is located, and he shall pay the same to the parties entitled thereto if called for or claimed by the original owner within ten years after the sale thereof, and such warehouseman shall at the same time file with said clerk an affidavit in which shall be stated the name and place of residence so far as the same are known.

Sec. 11. *Punishment for being party to unlawful selling, pledging, lending or disposing of property stored.* Whoever unlawfully sells, pledges, lends, or in any other way disposes of or permits or is a party to the unlawful selling, pledging, lending, or other disposition of any goods, wares, merchandise, or anything deposited in a public warehouse without the authority of the party who deposited the same, shall be punished by a fine not to exceed \$2,000 and by imprisonment in the state penitentiary for not more than three years, but no officer, manager or agent of such public warehouse shall be liable to the penalties provided in this section, unless with the intent to injure or defraud any person, he so sells, pledges, lends, or in any other way disposes of the same, or is a party to the selling, pledging, lending or other disposition of any goods, wares, merchandise, article or thing so deposited.

Sec. 12. *Powers in regard to perishable or dangerous property stored.* Whenever a public warehouseman has in its possession any property of a perishable nature, or which will deteriorate greatly in value by keeping, or upon which the charges for storage will be likely to exceed the value thereof, or which by its odor, leakage, inflammability or explosive nature is likely

to injure other goods, such property having been stored upon non-negotiable receipts, and when said warehouseman has notified the person in whose name the property was received to remove said property, but if such person has refused or omitted to remove said property and to pay the storage and proper charges thereon, said public warehouseman may in the exercise of a reasonable discretion sell the same at public or private sale without advertising, and the proceeds, if there are any, after deducting the amount of said storage and charges, and expense of sale, shall be paid or credited to the person in whose name the property was stored, and if said person cannot be found on reasonable inquiry, the sale may be made without any notice and the proceeds of such sale after deducting the amount of storage or expense of sale, shall be paid to the clerk of the court of the county wherein said warehouse is situated, who shall pay the same to the person entitled thereto, if called for or claimed by the rightful owner within five years of the receipt thereof by said clerk.

*Sec. 13. When unable to sell perishable and worthless property, warehouseman may dispose of it in any lawful manner without liability.* Whenever a public warehouseman under the provisions of the preceding section has made a reasonable effort to sell perishable and worthless property, and has been unable to do so because of its being of little or no value, it may then proceed to dispose of such property in any lawful manner, and it shall not be liable in any way for property so disposed of.

*Sec. 14. When property sold fails to bring storage expenses and other charges, party in whose name stored liable for balance.* Whenever a public warehouseman under the provisions of the two preceding sections has sold or otherwise disposed of property and the proceeds of such sale or disposition have not equalled the amount necessary to pay the storage charges, expenses of sale, and other charges against said property, then the person in whose name said property was stored shall be liable to said public warehouseman for an amount which added to the proceeds of such sale will be sufficient to pay all of the proper charges upon said property; or in case such property was valueless and there were no proceeds realized from its disposition,

the person in whose name said property was stored shall be liable to said public warehouseman for all proper charges against said property.

Sec. 15. *Conflicting laws repealed.* All acts or parts of acts inconsistent or in conflict with this act are hereby repealed.

Sec. 16. This act shall be in force and effect from and after its ratification.

In the General Assembly read three times, and ratified this the 14th day of March, A. D., 1901. Laws, North Carolina, 1901, p. 908 *et seq.*

An Act to fix a maximum schedule of charges for selling leaf tobacco by all warehouses in North Carolina.

#### **Charges of tobacco warehouses regulated :**

Sec. 1. *The General Assembly of North Carolina do enact:* That the charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses in the state of North Carolina shall not exceed the following schedule of prices, viz: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commission on the gross sales of leaf tobacco in said warehouses not to exceed two and one half per centum.

Sec. 2. *All leaf tobacco to be weighed by sworn weigher, etc.—Oath.* That all leaf tobacco sold upon the floor of any tobacco warehouse in the state of North Carolina shall first be weighed by some reliable person, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of \_\_\_\_\_, and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Said oath to be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.

Sec. 3. *Bill of charges to be rendered seller, etc.* That the proprietor of each and every warehouse shall render to each

seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charges or fees to be made or accepted.

Sec. 4. *Penalty for violation.* That for each and every violation of the provisions of this act a penalty of ten dollars be enforced and the same may be recovered by any one so offended.

Sec. 5. *Conflicting laws repealed.* That all laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 6. *When act to take effect.* This act shall be in force from and after the first day of October, one thousand eight hundred and ninety-five. Ratified this 23d day of February, A. D., 1895. Laws, North Carolina, 1895, p. 87 *et seq.*

**Tobacco warehouses—Tax on sworn statement to be made to clerk or commissioners :**

On every tobacco warehouse where tobacco is sold or exhibited for sale the annual tax shall be: For one hundred thousand pounds or less, five dollars, and five dollars for each additional one hundred thousand pounds sold. Every person or firm liable to tax under this section shall, within ten days after the first day of May and November in each year, deliver to the clerk of the board of county commissioners a sworn statement of the total amount of his or their sales for the preceding six months ending on the thirtieth day of April and the thirty-first day of October. The sheriff shall collect the tax without delay. Sec. 33, ch. 216, Laws, North Carolina, 1889. Ratified March 11, 1889.

## DECISIONS AFFECTING WAREHOUSEMEN.

## B.

*Warehouseman not insurers—Damages—Negligence.*

While warehousemen are not insurers like common carriers, they are liable for damages caused by their negligence, to articles stored with them. *Motley & Co. v. Southern Finishing & Warehouse Co.*, 122 N. C. 347.

*Conversion—Refusal to deliver.*

Where a bailee refuses on demand to deliver a note to the owner, who is entitled to the possession thereof, it constitutes a conversion, and an action of trover will lie against the bailee. *Smith v. Durham*, 127 N. C. 417.

## X.

*Loss by fire—Degree of diligence required—Suggestions by bailor or others—Bailee without profit—Rule.*

A railroad company had in its possession as warehousemen, the goods of plaintiff, upon which the freight had been paid. The goods were retained in the warehouse at plaintiff's request. A fire broke out near the warehouse but not on the property of the company. While the fire was burning plaintiff asked permission to remove his goods. This was refused, because, in the opinion of the company's officers, if the warehouse were opened much of the property stored therein would be stolen, and also because they did not think at that time there was danger of the warehouse taking fire. The company made every effort in its power to prevent the communication of the fire to the warehouse, and, after it was plain that such efforts would prove fruitless, had the doors of the warehouse broken open and as many goods removed therefrom as possible. The company had property of very great value so located that it must have been burned before the warehouse could take fire, and the utmost diligence was used to remove this property. If such efforts had been successful, the danger of the warehouse taking fire would have been greatly reduced. *Held* that it was not the duty of the company to act upon the suggestion

of plaintiff, or strangers, as to the best method to save the goods in the warehouse. That if it used all means at its command and acted upon the *bona fide* judgment of its employees as to the best method to prevent the destruction or loss of the warehouse and goods therein, it was not liable for the destruction of plaintiff's goods. The custodian of another's property, who uses the means which, at the time of danger, appear to him best for its preservation is not to be held responsible for failing to adopt measures which subsequent events show would have produced better results. An honest and reasonable effort made in the exercise of an honest judgment is all the law requires of him. *Turrentine v. Wilmington & W. R. R. Co.*, 100 N. C. 375.

*Same—Negligence—Prximate cause.*

In an action for damages against a railway company to recover the value of goods lost by the alleged negligence of the defendant, it appeared that after the arrival of the goods they were placed on a platform at the depot for the convenience of delivery to consignees, and remained there for nearly two days; notice of their arrival was given the plaintiff who paid the freight charges with full knowledge of the place of deposit, but failed to remove them on account of his inability at the time to procure the services of city draymen for that purpose, and in the afternoon of the second day they were destroyed by fire, together with much of defendant's property. *Held*, (1) There was a delivery in law of the goods to the plaintiff consignee, which exonerated the defendant company from liability as warehousemen ; (2) the fact that the fire originated in a steam cotton compress, erected on the company's premises with its permission but not under its control, does not constitute negligence in the defendant, the permission to erect the same not being the proximate cause of the injury sustained by the plaintiff. *Clark & Co. v. Charlotte, C. & A. R. R. Co.*, 85 N. C. 423.

*Same—Exclusion of evidence—Error.*

The plaintiff brought an action against the defendant steam-boat company for failure to safely convey to him certain goods which were destroyed by fire in defendant's warehouse, where they had been stopped on the route. There was a contract on

the bill of lading that the defendant was not to be liable for any loss or damage arising from fire, etc. *Held* that questions tending to show defendant had negligently allowed an accumulation of freight in its warehouse were improperly excluded. *Hornthal v. Roanoke, N. & B. S. Co.*, 107 N. C. 76.

### *Negligence.*

Warehousemen are liable under the general law for damages caused by their negligence. *Motley v. Southern Finishing & Warehouse Co.*, 124 N. C. 232.

### *Ignorance and want of experience of bailee known to bailor—Ordinary care.*

Where it was known to bailor at the time of storage that the bailee knew nothing about tobacco, and had had no experience in handling it, the bailee would not be *held* liable for injury resulting from want of skill and experience; but would be bound to use such ordinary care as a prudent man would exercise to guard against moisture in the structure of the warehouse and the location of the tobacco. *Motley v. Southern Finishing & Warehouse Co.*, 126 N. C. 339.

## O.

### *Measure of damages.*

The measure of damages for property damaged while in the care of a storage or warehouse company is the difference between the market value of the property in its damaged condition and what it would have sold for, if undamaged, on the day of its return to the owner. *Motley & Co. v. Southern Finishing & Warehouse Co.*, 122 N. C. 347.

## R.

### *Bill of lading—Ordinary care.*

The contract on the bill of lading discharged the defendant from its liability as an insurer, if ordinary care was exercised in protecting the goods while in its warehouse. *Hornthal v. Roanoke, N. & B. S. Co.*, 107 N. C. 76.

### *Same—Limitation as to —Notice of loss, void.*

A clause in a bill of lading that notice of loss or damage to

the goods must be given in writing to a carrier within thirty days after delivery thereof, or after due time for such delivery, is unreasonable and void. *Gwyn Harper Mfg. Co. v. Carolina Central R. R.*, 128 N. C. 280.

*Same—Interpretation—Exemption clause.*

A clause in a bill of lading that the goods will be shipped, "at the convenience of the company" will not protect it from liability for an unreasonable delay. *Branch & Pope v. Wilmington & W. R. R. Co.*, 88 N. C. 573.

*Same—Agency—Parol.*

A common carrier is not bound by a bill of lading issued by its agent unless the goods be actually received for shipment; and the principal is not estopped thereby from showing, by parol, that no goods were in fact received, *although the bill has been transferred to a bona fide holder for value*. *Williams, Black & Co. v. The Wilmington & W. R. R. Co.*, 93 N. C. 42; *Brown v. Brooks*, 7 Jones, 93, and *Smith v. Brown*, 3 Hawks, 580.

U.

*Charter provisions—Exclusive privileges unconstitutional.*

A provision in a charter of a warehouse corporation to the effect that such corporation shall not be liable for loss or damages not provided for in its warehouse receipt or contract, attempts to confer exclusive privileges and is therefore unconstitutional and void. *Motley & Co. v. Southern Finishing & Warehouse Co.*, 122 N. C. 347.

*Same—Same—Illustration.*

The clause of the charter of the defendant company which reads as follows: "Provided, however, that said company shall not be held responsible for losses arising from the act of God, or of common enemies, nor for any loss or damage not provided for in its warehouse receipt or contract; and said company may make such stipulations in its warehouse receipts or contracts, as to loss or damage ensuing by fire or other cause, as it may deem necessary and proper" is in contravention of art. 1, sec. 7, of the constitution. *Motley & Co. v. Southern Finishing & Warehouse Co.*, 124 N. C. 232.

## CHAPTER XXXIV.

## NORTH DAKOTA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Public warehouses—Commissioners of railroad, powers and duties:**

The duties imposed by the provisions of this article and the powers conferred herein devolve upon the commissioners of railroads. Revised Code, North Dakota, 1895, sec. 1783.

**Handling, weighing and storage of grain :**

It shall be the duty of the commissioners of railroads to supervise the handling, weighing and storage of grain and seed; to establish all necessary rules and regulations for the weighing of grain and for the management of the public warehouses of the state, so far as such rules and regulations may be necessary to enforce the provisions of this article or any law in this state in regard to the same, investigate all complaints of fraud or oppression in the grain trade of this state, and correct the same as far as it may be in their power. *Id.* sec. 1784.

**Rules to be published :**

The rules and regulations so established shall be printed and published by the commissioners of railroads in such manner as to give the greatest publicity thereto, and the same shall be in force and effect until they are changed or abrogated by such commissioners in a like public manner. *Id.* sec. 1785.

**Amendment—Public warehouses—Defined :**

All buildings, elevators and warehouses, and all grist and flour mills doing a shipping business in this state, erected and operated, or which may hereafter be erected and operated by any person, association, copartnership, corporation or trust, for the purposes of buying, selling, storing, shipping or handling

grain for profit, are declared public warehouses, and the person, association, copartnership or corporation owning or operating such buildings, elevators or warehouses, which are now, or may hereafter be located or doing business within this state, whether such owners or operators reside within this state or not, are public warehousemen within the meaning of this article, and none of the provisions of this article shall be construed so as to permit discrimination with reference to buying, receiving and handling grain of standard grades or in regard to the persons offering such grain for sale, storage and handling, at such public warehouses, while the same are in operation. [Approved March 13, 1901.] Laws of N. D. 1901, ch. 140, p. 179.

#### **License, how obtained—Fee, how determined :**

An annual state license must be obtained through the commissioners of railroads for each and every public grain warehouse in operation in this state. No license issued under this article shall describe more than one public grain warehouse, or grant permission to operate any other public grain warehouse than the one therein described. The license fee is hereby fixed at two dollars for warehouses of a capacity of less than ten thousand bushels; and three dollars for warehouses of a capacity of ten thousand bushels and over, for each public grain warehouse; provided, that before any license is issued the person applying therefor shall file with the commissioners of railroads the receipt of the state treasurer, showing that the applicant has paid into the state treasury the amount of said license fee. Revised Code, North Dakota, 1895, sec. 1787.

#### **License to be conspicuously posted—Penalty :**

The license thus obtained shall be posted in a conspicuous place in the public warehouse so licensed. Every such license shall expire on the first day of August next following the issuance thereof, and no license shall run for a longer period than one year. Any person or association, who shall transact the business of public warehouseman without first procuring a license as herein provided, shall on conviction, be fined in a sum not less than twenty-five dollars for each and every day such business is carried on. *Id.* sec. 1788.

**Bond to be filed :**

The proprietor, lessee or manager of any warehouse or elevator in this state shall file with the commissioners of railroads a bond to the state with good and sufficient sureties to be approved by such commissioners in the penal sum of not less than five thousand nor more than seventy-five thousand dollars, in the discretion of the commissioners, conditioned for the faithful performance of their duty as public warehousemen and a compliance with all the laws of this state in relation thereto. One bond only need be given for any line of elevators or warehouses owned, controlled or operated by one individual, firm or corporation. Such bond, specifying the location of each elevator or warehouse operated by such individual, firm or corporation, shall be in a sufficient amount to protect the holder of outstanding tickets. *Id.* sec. 1789.

**Warehouse receipts, what to contain :**

All owners of such elevators and warehouses shall, upon the request of any person delivering grain thereat, give a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain, and shall state upon its face the quantity and grade fixed upon the same. All warehouse receipts shall be consecutively numbered, and no two receipts bearing the same number and series shall be issued during the same year. No warehouse receipt shall be issued except upon the actual delivery of grain into such warehouse. No such warehouseman shall insert in any warehouse receipt issued by him any language in anywise limiting or modifying his liabilities as imposed by the laws of this state. *Id.* sec. 1790.

**What storage receipts shall express :**

Each storage receipt issued in this state shall expressly provide that at the option of the holder of such receipt the kind, quality and quantity of grain for which such receipt was issued shall be delivered back to him at the same place where it was received upon the payment of a reasonable charge per bushel for receiving, handling, storing and insurance charges, such charges to be fixed by express terms in the storage receipt at

the time of receiving the grain at the elevator or warehouse and at the time of issuing the receipt; but no charges shall be made for cleaning grain unless such grain has been actually cleaned; and nothing in this section shall be construed to require the delivery of the identical grain specified in the receipt so presented, but an equal amount of the same grade, except wheat placed in special bins. *Id.* sec. 1791.

**Bailment, not a sale—Insolvency :**

Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state and the receipt issued therefor provides for the delivery of a like amount and grade to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except actions by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of the failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding warehouse receipts for grain so stored with such bailee. And in such event grain on hand in any particular elevator or warehouse shall first be applied to the redemption and satisfaction of receipts issued by such warehouse. *Id.* sec. 1792.

**Larceny—Punishment :**

Each person and each member of any association, firm or corporation doing a grain warehouse or grain elevator business in this state, who shall after demand, tender and offer as provided in the last section, willfully neglect or refuse to deliver to the person making such demand, the full amount of grain of the grade or the market value thereof which such person is entitled to demand of such bailee, shall be deemed guilty of larceny. *Id.* sec. 1793.

**Rates of storage :**

The charges for storage and handling of grain shall not exceed the following rates: For receiving, elevating, insuring, delivering

and twenty days' storage, two cents per bushel. Storage rates after the first twenty days, one half cent for each fifteen days or fraction thereof, and not exceeding five cents for six months. The grain shall be kept insured at the expense of the warehouseman for the benefit of the owner. *Id.* sec. 1794.

#### **Section constitutional :**

The above section *held* constitutional in *North Dakota ex rel. Stoesser v. Brass*, 2 N. D. 482, aff'd 153 U. S. 391. See North Dakota decisions, page 626.

#### **Penalty for violation of this article :**

Any person who shall knowingly cheat, or falsely weigh any wheat or other agricultural products, or who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and shall on conviction thereof be subject to a fine of not less than two hundred dollars nor more than one thousand dollars and be imprisoned in the penitentiary for a period not exceeding one year, in the discretion of the court. *Id.* sec. 1795.

### **ERCTION OF GRAIN WAREHOUSES ON RAILROAD RIGHT OF WAY.**

#### **Construction of warehouses on right of way :**

Any two or more persons who have or shall by articles of agreement in writing associate themselves together under any name assumed by them for the purpose of operating a warehouse or elevator for the purchase, storage and shipping of wheat or other grain within this state, may make an application in writing to any railroad company or corporation organized under the laws of this state, or doing business therein, be permitted to construct, maintain and operate a warehouse or elevator at any of its regular way stations upon its right of way, to be used for the purpose aforesaid, and the railroad company or corporation so applied to shall grant such application without regard to the capacity of such elevator or warehouse and without discrimination as to persons, and in the order in which such application shall be presented. *Id.* sec. 1796.

**Public warehouses, how rental to be determined :**

All elevators or warehouses erected under the provisions of the last section shall be kept open for the transaction of business during such portion of the year as may be required by the laws of the state, or commissioners of railroads. The associations or corporations which shall avail themselves of the benefit of this section are declared to be public corporations, subject to legislative supervision and control at all times and in all particulars in which rights or powers are conferred upon them by the provisions hereof. Before the application hereinbefore mentioned need be granted by any railroad company or corporation, the association making the same shall pay or secure to such railroad company or corporation such compensation for the right, privilege or franchise demanded in such petition as may be agreed upon between the parties as a just and reasonable yearly rental therefor, or a fixed or certain amount to be paid in one sum in lieu of a rental to be paid annually for the use and occupation of the site occupied by such warehouse or elevator and the uses and privileges connected therewith. If they fail to agree upon such yearly rental, or upon a gross sum to be paid in lieu thereof, all further proceedings shall be had under the chapter on eminent domain in the code of civil procedure. *Id.* sec. 1797.

**Side tracks to be provided by railroad company :**

Every railroad company or corporation organized under the laws of this state, or doing business therein, shall upon application in writing provide reasonable side track facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations; and every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its side tracks to and from any warehouse or elevator without reference to its size, cost or capacity, where grain is or may be stored, that such railroad company shall not be required to construct or furnish any side tracks except upon its own land or right of way; provided, further, that such elevators and warehouses shall not be constructed within one hundred feet of any existing structure and shall be at safe fire

distance from the station building and so as not essentially to conflict with the safe and convenient operation of the road; and where stations are ten miles or more apart the railroad company when required so to do by the commissioners of railroads shall construct and maintain a side track for the use of shippers between such stations. *Id.* sec. 1798.

#### **Rights and privileges of individuals :**

Individuals shall have the same rights and privileges under the provisions of the last three sections as associated persons, corporations and associations. *Id.* sec. 1799. See ch. 114, Laws of 1895, below.

#### **When unclaimed property may be sold :**

Whenever any trunk, carpetbag, valise, bundle, package or article of property transported or coming into the possession of any railroad, or express company or any other common carrier in the course of his or its business as common carrier shall remain unclaimed and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed and the owner or person to whom the same is consigned cannot be found upon diligent inquiry or, being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier to sell such article at public auction after giving the owner or consignee fifteen days' notice of the time and place of sale through the post-office and by advertising in a newspaper published in the county where such sale is made and out of the proceeds of such sale to pay all legal charges on such article and the amount over, if any, shall be paid to the owner or consignee upon demand. *Id.* sec. 4195.

#### **When perishable property may be sold :**

Perishable property which has been transported to its destination and the owner or consignee notified of its arrival, or being notified, refuses or neglects to receive the same and pay the legal charges thereon, or if upon diligent inquiry the consignee cannot be found, such carrier may in the exercise of a

reasonable discretion sell the same at public or private sale without advertising and the proceeds after deducting the freight and charges and expenses of sale shall be paid to the owner or consignee upon demand. *Id.* sec. 4196.

**Applies to hotel keepers and warehousemen :**

The provisions of the last two sections shall apply to hotel keepers and warehousemen. *Id.* sec. 4197.

**Bill of lading—Defined :**

A bill of lading is an instrument in writing signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. *Id.* sec. 4198.

**Negotiable :**

All the title to the freight which the first holder of a bill of lading had when he received it passes to every subsequent indorsee thereof in good faith and for value in the ordinary course of business with like effect and in like manner as in the case of a bill of exchange. *Id.* sec. 4199.

**When delivery transfers :**

When a bill of lading is made to bearer or in equivalent terms a simple transfer thereof by delivery conveys the same title as an indorsement. *Id.* sec. 4200.

**Obligations of carriers not altered :**

A bill of lading does not alter the rights or obligation of the carrier as defined in this chapter unless it is plainly inconsistent therewith. *Id.* sec. 4201.

**Carrier must give sets of bills on demand :**

A carrier must subscribe and deliver to the consignor on demand any reasonable number of bills of lading of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so the consignor may take the freight from him and recover from him besides all damages thereby occasioned. *Id.* sec. 4202.

**Carrier exonerated by delivering freight to holder:**

A carrier is exonerated from liability for freight by delivery thereof in good faith to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer. *Id.* sec. 4203.

**When surrender required:**

When a carrier has given a bill of lading or other instrument substantially equivalent thereto, he may require its surrender or a reasonable indemnity against claims thereon before delivering the freight. *Id.* sec. 4204.

**Making false manifest—Bill of lading—Penalty:**

Every person guilty of preparing, making or subscribing, any false or fraudulent manifest, invoice, bill of lading, boat's register or protest, with intent to defraud another, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 7497.

**Bills of lading—Fraudulent—Punishment:**

Every person being the master, owner or agent of any vessel or officer or agent of any railroad, express or transportation company or otherwise being or representing any carrier, who delivers any bill of lading, receipt or other voucher, or by which it appears that any merchandise of any description has been shipped on board any vessel or delivered to any railroad, express or transportation company or other carrier, unless the same has been shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 7540.

**Warehouse receipt—Fraudulent—Punishment:**

Every person carrying on the business of a warehouseman, wharfinger or other depositary of property, who issues any receipt, bill of lading or other voucher for any merchandise of

any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise or as security for any indebtedness, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years or by a fine not exceeding one thousand dollars, or both. *Id. sec. 7541.*

**Same—Exceptions :**

No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue. *Id. sec. 7542.*

**Warehouse receipt—Duplicate :**

Every person mentioned in sections 7540 and 7541, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncancelled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id. sec. 7543.*

**Selling goods without consent of holder of bill of lading :**

Every person mentioned in sections 7540 and 7541, who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id. sec. 7544.*

**Bill of lading or receipt must be cancelled :**

Every person, such as mentioned in section 7541, who delivers to another any merchandise for which any bill of lading, receipt or voucher has been issued, unless such receipt or voucher bears upon its face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be cancelled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars or both. *Id.* sec. 7545.

**When last two sections do not apply :**

The last two sections do not apply when property is demanded by virtue of process of law. *Id.* sec. 7546.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—The mingling of wheat with other of a like quality.*

The plaintiff, the owner of wheat, deposited the same with the defendant, a warehouseman. It appears under the warehouse receipts and the statutes pertaining thereto that plaintiff was not entitled to demand the delivery of the identical wheat stored. It was *held* that this constitutes a contract of bailment and not a sale. *Marshall v. Andrews & Gage*, 8 N. D. 364.

## B.

*Conversion—Prima facie case.*

Where the plaintiff shows delivery of the property to the defendant and a demand for its return and a refusal to comply with such demand, he has made out a *prima facie* case of conversion. *Id.*

*Same—Necessity of demand.*

In order to sustain an action for the conversion of property stored with a warehouseman it is essential to show demand prior to suit. *Towne v. St. Anthony & Dakota Elevator Co.*, 8 N. D. 201; *Sanford v. Duluth & Dakota Elevator Co.*, 2 N. D. 6.

*Same—Effect of notice as to ownership of property stored.*

If a warehouseman receives grain and stores the same issuing the receipts therefor in the name of the one who deposits the same, it is *held* that in the absence of notice, actual or constructive, of the claim of another of title to the grain stored, that the warehouseman cannot be held guilty of conversion. If, however, it can be shown that the warehouseman received notice or was in possession of such facts as would put a reasonable man on guard or notice of the adverse title, it is *held* that the issuance of receipts to one not the owner of the grain, or, the shipment of the grain out of the state, would constitute a conversion thereof. *Towne v. St. Anthony & Dakota Elevator Co.*, 8 N. D. 200.

*Same—Purchase of mortgaged chattel not in itself a conversion.*

The owner of certain wheat who had borrowed money thereon and had given a chattel mortgage to secure the payment thereof, such mortgage being properly recorded as required by law, deposited the same in the warehouse of the defendant, the defendant thereupon paying in full for the wheat and becoming the purchaser thereof. In a suit against the defendant for the conversion of the wheat it was *held* that in such a case a demand was essential before suit brought, and further that the sale and delivery alone did not constitute a conversion. It was further *held* that even had the defendant had actual notice of the mortgage in addition to the constructive notice that the purchase by him of the property would in no sense have been a conversion thereof as, under the laws of the state, the owner of personal property has always a right to sell and deliver the same, the purchaser taking a good title subject to any lien thereon, and finally that a chattel mortgage does not transfer the title of the property. *Sanford v. Duluth & Dakota Elevator Co.*, 2 N. D. 6.

*Same—When demand unnecessary.*

The defendant, a warehouseman, received wheat in store and prior to issuing the receipts therefor to the depositor received notice from the plaintiff that she had a claim against such wheat pursuant to an agreement with the depositor and notified the warehouseman not to issue the receipts until her claim was satisfied. Subsequently the defendant issued the receipts to the depositor without notice to the plaintiff. Upon the above stated facts it was *held* that the issuance of these receipts by the warehouseman constituted a conversion of the property for which he was liable and that the contention made in his behalf that it was necessary to show a demand made upon him prior to suit brought could not be sustained as the conversion had taken place at the time the receipts were issued to the depositor. *Willard v. Monarch Elevator Co.*, 10 N. D. 400.

## L.

*Replevin—When it will not lie—Mingling of grain.*

The owner of certain wheat who had mortgaged it to the

plaintiff stored the same in a warehouse and took a general storage receipt therefor. As was the custom, the wheat was mingled with other wheat stored in the warehouse and the defendant had a right to the return of the identical wheat stored. The mortgagee brought replevin against the defendant for the recovery of the wheat. It was held that it could not be maintained for the defendant as the owner of the storage ticket did not have either constructive or actual possession of the grain in question. *Best v. Muir*, 8 N. D. 44; *Marshall v. Andrews & Gage*, 8 N. D. 364.

#### X.

##### *Loss by fire—Gratuitous payment—Gross negligence.*

In a suit against a railroad company charging it with liability as a warehouseman for the destruction of goods by fire while stored in its depot the evidence was conflicting as to whether or not the company was acting as a gratuitous bailee or as one for hire; but as the evidence further showed that burning waste had been thrown within thirty inches of the depot platform and had been left there by one of the employees of the defendant, it was held that the company was liable in either case and that such conduct constituted gross negligence. *Whiting v. Chicago, M. & St. P. R. R. Co.*, 5 Dak. 90.

##### *Same—Burden of proof.*

Where the defendant, a warehouseman, attempted to excuse the non-delivery of goods intrusted to him on the ground that they were destroyed by fire, the burden of proof was on him to show that the fire was not caused by his negligence. *Marshall v. Andrews & Gage*, 8 N. D. 364.

#### U.

##### *Public warehousemen—Statute prescribing rates of storage constitutional—if such rates be unreasonably low, quære.*

By chapter 126 of the Laws of 1891 of the state of North Dakota the rates of storage which public warehousemen were allowed to charge were prescribed. Said act further defined what would constitute a public warehouse. In an action by the state at the relation of one Stoeser against a warehouseman for violation of this statute it was contended in behalf of the

defendant that the act in question abridged his privileges and immunities and that it deprived him of his liberty and property without due process of law and that it denied to him the equal protection of the law guaranteed to him by the state and federal constitutions. It appeared that the defendant had sufficient empty space in his warehouse in which to store the relator's grain and that he refused to receive the grain for the reason that he was unwilling to reduce his storage charges under legislative direction. Nothing was alleged or claimed in argument tending to show that the prescribed rate would be noncompensatory; much less that it would operate practically to confiscate defendant's business as a warehouseman. The question involved was therefore clearly one of legislative power with reference to the limitations of such power existing in the constitutions of the state and nation. The court *held* that the act in question was constitutional as the legislature in the proper exercise of the internal police power, inherent in every government, could control the business of warehousemen. *North Dakota ex rel. Stoeser v. Brass*, 2 N. D. 482, aff'd 153 U. S. 391; *Munn v. Illinois*, 69 Ill. 80, aff'd 94 U. S. 113; *The People v. Budd*, 117 N. Y. 1, aff'd 143 U. S. 517. In the last cited case the United States supreme court declined to anticipate what its decision might have been had the storage rates prescribed by statute been inadequate. See note under *People v. Budd*, New York Decisions, p. 601, this volume.

## CHAPTER XXXV.

## OHIO.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Lien of consignee of merchandise :**

Every person in whose name any merchandise is shipped, or delivered to the keeper of any warehouse, or other factor or agent, to be shipped, shall be deemed the true owner thereof, so far as to entitle the consignee of such merchandise to a lien thereon: First, for any money advanced, or negotiable security given by such consignee, to or for the use of the person in whose name such shipment, or such delivery of merchandise to be shipped has been made. Second, for money or negotiable security received by the person in whose name such shipment, or such delivery of merchandise to be shipped, has been made to, or for the use of, such consignee. Bates' Annotated Ohio Stats. 1900, sec. 3214.

**Limitation on last section :**

The lien provided for in the preceding section shall not exist when such consignee has notice by the bill of lading, or otherwise, at or before the advancing of any money or security by him, or at or before receiving of such money or security by the person in whose name the shipment or the delivery of the merchandise to be shipped has been made, that such person is not the actual and *bona fide* owner thereof. *Id.* sec. 3215.

**In what cases factor or agent deemed true owner :**

Every factor or other agent, intrusted with the possession of any bill of lading, custom house permit, or warehousekeeper's receipt for the delivery of any such merchandise, and every such factor or agent, not having the documentary evidence of title, intrusted with the possession of any merchandise for the purpose of sale, or as a security for any advances to be made

or obtained thereon, shall be deemed to be the true owner thereof, so far as to give validity to any contract made by such agent with any other person for the sale or disposition of the whole or any part of such merchandise, for any money advanced or negotiable instrument, or other obligation in writing, given by such other person upon the faith thereof. *Id.* sec. 3216.

**Above section construed :**

Where a bank had in good faith loaned money to a factor and had taken in security therefor a warehouse receipt, which had been sent to the factor by the owner for the purpose of effecting a sale, it was *held* that the transaction was a valid one and the bank was therefore protected; it appearing that the loan made to the factor was a new loan and that the receipt had not been transferred to the bank to secure any antecedent debt or demand. *Cleveland, Brown & Co. v. Shoeman*, 40 O. S. 176.

**When merchandise accepted from such agent as security for antecedent debt :**

Every person who accepts any such merchandise on deposit from any such agent, as security for any antecedent debt or demand, shall not thereby acquire or enforce any right or interest in or to such merchandise or document, other than was possessed or might have been enforced by such agent, at the time of such deposit. *Bates' Annotated Ohio Stats.* 1900, sec. 3217.

**Rights of true owner under last two sections :**

Nothing contained in the two last preceding sections shall be construed to prevent the true owner of any merchandise, so deposited, from demanding or receiving the same, upon repayment of the money advanced, or on restoration of the security given on the deposit of such merchandise, and upon satisfying such lien as may exist thereon in favor of the agent who may have deposited the same; nor from recovering any balance which may remain in the hands of the person with whom such merchandise has been deposited, as the produce of the sale thereof, after satisfying the amount justly due to such person by reason of such deposit. *Id.* sec. 3218.

**Hypothecation, etc., by common carriers and warehousemen :**

Nothing contained in this chapter, except as hereinafter provided, shall authorize a common carrier, warehousekeeper, or other person to whom merchandise or other property may be committed for transportation or storage only, to sell or hypothecate the same. *Id. sec. 3219.*

**Owner's relief by action :**

A court may compel discovery, or grant relief in an action therein by owner of any merchandise or other property, so intrusted or consigned, against the factor or agent by whom such merchandise or other property has been applied or sold, contrary to law, or against a person who knowingly is a party to such fraudulent application or sale thereof; but no answer in such action shall be read in evidence against the defendant making the same on the trial of any indictment for the fraud charged in the petition. *Id. sec. 3220.*

**Notice to owner of receipt of freight :**

All express companies, transportation companies, forwarding and commission merchants, common carriers, warehousemen, wharfingers, and railroad companies, doing business in this state shall within thirty days after the receipt of any property in their warehouse, depot, station, store or other place of deposit or doing business when such property is plainly marked with the owner's name and place of residence, or be otherwise known, notify the owner that such property is held by them subject to charges, either by leaving such notice at the usual residence or place of business of the owner, or by depositing the same, postage prepaid, in the proper post-office, duly addressed to such owner. *Id. sec. 3221.*

**Register of freight :**

All persons, associations, or companies, shall keep a register, in which shall be entered a list or inventory of all goods, wares, merchandise, baggage, or other property, with a pertinent description thereof by marks thereon, the size and weight, and the depot, warehouse, or other place where the same is deposited,

the time when the same was received, and the amount of charges claimed thereon, which may be left in the possession of such person, association or company, by reason of the owner being unknown, or when such owner's residence is not known, or when such property has been refused, or the owner has neglected to receive the same. *Id.* sec. 3222.

#### **When property may be sold :**

When any such property has been conveyed to any point in this state, and remains unclaimed for the space of six months at the place to which it is consigned, and the owner fails within that time to claim the same, and to pay the proper charges, if there be any against it, such person, association, or company, may sell such freight or other property, at public auction, offering each parcel separately. *Id.* sec. 3223.

#### **Notice of sale of property to be given :**

Such property may be offered for sale either in the place where the office, station, depot, or warehouse in which the same has been deposited for safe-keeping, is located, or at any other place where such person, association, or company may deem best to insure a prompt sale thereof; at least thirty days' notice of the time and place of sale, containing a descriptive list of the several articles to be sold, with names, numbers, and marks thereon, shall be given, by posting such notice at the office, station, or depot of such person, association, or company in the county where the place to which such property was consigned is situated, or, if there be no such office, station, or depot, by posting such notice in three public places in such county; and, in addition to the posting at the place of consignment, such descriptive list must be posted at the place where the property is to be sold, and thirty days' notice of the time and place of sale must be published in a newspaper of general circulation in the county where the property is to be sold. *Id.* sec. 3224.

#### **Disposition of proceeds of sale :**

Such person, association, or company, from the proceeds of the sale of such property, shall pay all the necessary costs and expenses of the sale, and all proper charges for freight and storage

of the property sold, apportioning such expenses and charges, as near as may be, among the articles sold, to the amount received for each, and hold the overplus, if any, subject to the order of the owner thereof, at any time within one year after such sale, upon proof of ownership by affidavit of the claimant or his attorney; and after the expiration of one year, all such sums unclaimed shall be paid into the state treasury, to be placed to the credit of the common schools; but any such article remaining unsold may again be offered as above provided, until sold. *Id.* sec. 3225.

#### **Suit to subject freight to payment of costs, etc. :**

Such person, association or company may bring suit before any court of competent jurisdiction for the amount of the freight, storage, and legal charges thereon, and subject such freight to the payment thereof, after ten days from the giving of the notice provided for in section *thirty-two hundred and twenty-one* unless such cost and charges are paid, if the owner or consignee is known or can be found in the county, but if such owner or consignee is unknown, a non-resident of the county, or his place of residence is unknown, then such notice shall be published for not less than ten days in a newspaper of general circulation in such county, and in such case the suit may be brought after ten days from the first publication; and the judgment obtained shall be a lien upon the freight, to satisfy which, with costs of suit, the same shall be sold. *Id.* sec. 3226.

#### **Storage and lien therefor :**

Such person, association, or company, after the expiration of ten days from the receipt of goods at the place to which they are consigned, may, upon giving or depositing the notice provided in section *thirty-two hundred and twenty-one*, and the expiration of ten days, charge a fair and reasonable cost for storage, which shall be a lien upon the goods so stored, and such person, association, or company may, after the expiration of said ten days, deliver such goods to any warehouseman or storage merchant at the point of destination of such goods or merchandise, or in case there be no responsible warehouseman or storage merchant at such point willing to receive the goods,

then at the most convenient point where storage can be effected, and receive from such warehouseman the freight and charges due such railroad or other company upon the same, notifying the owner or consignee of such storage, when known, in the manner provided in section *thirty-two hundred and twenty-one*, and the advances made, and all reasonable charges for storage shall be a lien upon the goods so stored. *Id.* sec. 3227.

#### **Copy of notice, sale bill, etc., to be kept :**

Such person, association, or company shall keep a copy of the notice, a copy of the sale bill, and the expenses thereof, proportional to each article sold, and also the oath of the claimant of the residue of the proceeds as aforesaid, and shall furnish an inspection of the same, and, if required, copies thereof to any one, on payment of the proper charges therefor. *Id.* sec. 3228.

#### **Sale of perishable articles :**

If any perishable property be so conveyed as freight, and remain unclaimed until in danger of great depreciation, or the same be refused, or the owner thereof cannot be found, then such person, association or company may sell the same at private sale, or auction, without giving notice, for the best price it will bring, and apply the proceeds as aforesaid. *Id.* sec. 3229.

#### **Above section construed :**

Live stock is perishable property within the meaning of above section, and may be sold when no owner can be found. *Township Trustees v. Brighton Stock Yards Co.*, 27 O. S. 435.

#### **Within what time property may be claimed :**

If the owner of any such property, at any time within five years, reclaim the same, and produce satisfactory evidence to the auditor of state of his ownership thereof, the auditor shall draw his warrant in favor of such person upon the treasurer of state for the amount paid into the state treasury. *Bates' Annotated Ohio Stats.* 1900, sec. 3230.

#### **Penalty for neglect to comply with provisions :**

Any such person, association or company who refuses or neg-

lects to perform any of the duties required by this chapter, with the intent to avoid the provisions thereof, shall forfeit and pay a sum not less than one hundred dollars, nor more than five hundred dollars, at the discretion of the court, to be recovered for the use of common schools in the county in which the principal office of such person, association, or company is located, and shall, moreover, be liable to any person injured thereby in double the value of the property. *Id.* sec. 3231.

**Authorizing certain corporations to purchase or lease real estate :**

A corporation organized for the purpose of constructing and maintaining buildings to be used for hotels, storerooms, offices, warehouses, factories, shall be authorized to acquire by purchase or lease, and to hold, use, mortgage and lease all such real estate or personal property as may be necessary, for the purpose hereinbefore mentioned; provided, however, that no such corporation shall acquire or mortgage any real or leasehold estate, or lease the same for a period exceeding (with all privileges of renewal) the term of five years, without the consent of the holders of two thirds of the stock, obtained at a meeting called for that purpose, written notice of which shall have been given to each stockholder, either personally, or deposited in the post-office, properly addressed and duly stamped, not less than ten days before the day fixed for such meeting. Nothing herein shall be construed as authorizing corporations to buy and sell, or to deal in real estate for profit. *Id.* sec. 3884a.

**Authorizing railroad companies to issue storage or warehouse certificates :**

Any railroad company, organized under the laws of this state, upon the receipt of iron ore or grain or other merchandise from any vessel, water-craft or other source for storage and deposit, duly consigned to said company may, upon the request or demand of the owner or owners of said ore, grain or other merchandise, and with the written consent of the consignee, issue to the owner or owners of said ore, grain or other merchandise, a certificate, receipt or voucher, which certificate, receipt or voucher, shall name the railway company by whom said ore or

grain or other merchandise is held at the time said certificate, receipt or voucher is issued, to whom said ore, grain or other merchandise was consigned, the quantity held by said company, and so near as may be the quality or grade thereof, but not incurring any liability for the grade or quality, which certificate, receipt or voucher, shall be signed by the president or vice-president of said company, and countersigned by the general agent of said company appointed for that purpose, or such other officers as may be appointed by said railroad company, and shall be transferable and negotiable by indorsement thereon, by the person or persons to whose order the same is made payable. That on the presentation of said certificate, receipt or voucher, so indorsed to said railroad company at its general office, (by) the holder or holders thereof and on demand, the said railway company shall deliver to said holder or holders, the iron ore or grain or other merchandise so described therein, on the payment by such person or persons to said railway company (of) all proper charges thereon. *Id. sec. 3378l.*

#### **False or fictitious bills of lading :**

Whoever executes and delivers to any person any false or fictitious bill of lading, receipt, schedule, invoice, or other written instrument, to the purport or effect that any property usually transported by carriers had been or was held, delivered, received, or deposited on board of any steamboat or watercraft navigating the waters in or bordering upon the state of Ohio, or at the freight office, depot, station, or other place designated or used by any railroad company, or other common carrier for the reception of any such property, when such property was not held, or had not, in fact and in good faith, been delivered, received, or deposited on board such steamboat, or other watercraft, or at such place, at the time such written instrument was made and delivered, with intent to defraud; or indorses, assigns, transfers, or puts off, or attempts to indorse, assign, transfer, or put off, any such false or fictitious bill of lading, receipt, invoice, schedule, or other written instrument, knowing the same to be false, fraudulent, or fictitious, shall be imprisoned in the penitentiary not more than four years nor less than one year. *Id. sec. 7085.*

**. False or fictitious warehouse receipts :**

Whoever executes and delivers to any person any false or fictitious warehouse receipt, acknowledgment, or other instrument of writing, to the purport and effect that any person held or had received in store, or held or had received in any warehouse, or in any other place, or held or had received in possession, custody, or control, any goods, wares, or merchandise, when such goods, wares, or merchandise were not held, or had not been received, in good faith, by such person, with intent to defraud; or indorses, assigns, transfers, or delivers, or attempts to indorse, transfer, or deliver to any person, any such false or fictitious warehouse receipt, acknowledgment, or instrument of writing, knowing the same to be false, fraudulent, or fictitious, shall be imprisoned in the penitentiary not more than three years nor less than one year. *Id.* sec. 7086.

**Appointment of tobacco inspector :**

The probate court of any county, upon application of the proprietor of any leaf tobacco commission warehouse, who offers for sale tobacco at public auction, shall qualify the appointee of such commission warehouse of one or more suitable persons, well skilled in the inspection of leaf tobacco, to act as inspectors and weighers of tobacco at such commission warehouse to serve as such during the pleasure of such warehouseman, and until successors shall be appointed and qualified, and the court shall thereupon also grant a license to the proprietor of such warehouse to conduct his business in accordance with the provisions of this chapter. *Id.* sec. 4334.

**Exemption from duty for auction sales :**

No duty or tax shall be imposed or collected for sales of tobacco at auction at such warehouse. *Id.* sec. 4335.

**Warehouseman's bond :**

Before granting any license for the establishment of a tobacco warehouse, the court shall require the proprietor of such warehouse to enter into bond, payable to the state, in the penal sum of twenty thousand dollars, with at least one sufficient surety, resident in the county, conditioned for the faithful discharge

of all duties devolved upon him by this chapter, which shall be filed at the probate court granting the license for the use of any person who may be aggrieved by the non-fulfilment of such duties. *Id.* sec. 4336.

#### **Fees for issuing license, etc :**

The fees for issuing such license shall be five dollars, and for appointing inspectors and approving their bonds, three dollars. *Id.* sec. 4337.

#### **Entry of appointment on journal :**

The court shall cause an entry of the appointment of an inspector to be made on the journal of the court, and a certificate of his appointment, under the seal of the court, shall be delivered to the person so appointed. *Id.* sec. 4338.

#### **Form of inspector's oath :**

Every inspector of tobacco, before he acts as such shall, under the penalty of three hundred dollars, take the following oath of office: "I, A. B., appointed inspector of tobacco at \_\_\_\_\_ warehouse, do swear that I will, in all things, faithfully discharge my duty in the office of inspector according to the best of my skill and judgment, according to law, without fear, favor, affection, malice, or partiality, so help me God;" which oath any justice of the peace may administer, a copy of which shall be transmitted to the court appointing the inspector, within ten days from the time the oath has been administered. *Id.* sec. 4339.

#### **Inspector's bond :**

Every such inspector and weigher, before he executes any part of his duty, shall, under the penalty of eight hundred dollars, enter into bond in the penal sum of two thousand dollars, to the satisfaction of the probate judge, with sufficient sureties, payable to the state for the use of any person injured by the neglect or misconduct of such inspector and weigher, with condition that such inspector will diligently and carefully unease and break in at least four places, or cause the same to be done, in his presence, view and examine all tobacco brought to the warehouse, at which he is inspector and weigher, which

he is called on to view, weigh and inspect, at such warehouse, or any other public warehouse; and that he will not receive, weigh, pass, or mark any tobacco, or hogshead, barrel, box, or case of tobacco, prohibited by this chapter, and that he will, in all things, well and faithfully discharge and execute his duty in the office of inspector and weigher, according to the provisions of this chapter, which bond shall be deposited with the said probate judge, who shall file the same in his office, and any person injured may bring suit thereon for a breach thereof. *Id.* sec. 4340.

#### Above section construed :

The contention that the inspectors appointed under ch. 6, title 5, of the Revised Statutes as amended April 20, 1881 (78 O. Law, 242), have the *exclusive* right to inspect tobacco in all the warehouses belonging to the members of a certain board of trade, cannot be maintained. The tobacco which such inspectors are required to inspect is limited to such tobacco as they may be "called on to view, weigh and inspect, at such warehouse, or any other public warehouse." Sec. 4340, above; *The State v. Casey*, 38 O. S. 555.

#### Fees of inspector :

There shall be allowed to inspectors of tobacco, appointed by virtue of this chapter, the sum of twenty-five cents for each hogshead, box, or case of tobacco inspected, to be paid by the owner or agent delivering the same at the warehouse, and to the proprietor or proprietors of such warehouse, two dollars and fifty cents per hogshead, and one dollar per box or case, for receiving, storing, weighing, marking, selling at public outcry or at private sale, at the request of the owner or consignor, and collecting, one half of which shall be paid by the owner or consignor, and the other half by the purchaser of the tobacco, and no proprietor of a warehouse shall be bound to deliver any tobacco stored with him until such charges and the inspector's fees are paid. Bates' Annotated Ohio Stats. 1900, sec. 4341.

#### Penalty against inspector for speculating :

No inspector shall, directly or indirectly, during his con-

tinuance in office, buy or receive any tobacco by way of barter, loan or exchange or in any way meddle with, or busy himself in procuring tobacco to be sold or consigned to any merchant, except the tobacco owned by such inspector, under the penalty of one hundred dollars for every hogshead of tobacco so brought or received, or procured to be sold or consigned contrary to this chapter; but any inspector may receive his fees for inspection, and his proper rents or debts in tobacco. *Id.* sec. 4342.

**Penalty against altering, etc., inspector's marks :**

Whoever willfully erases or in anywise alters or defaces any letter, mark, number or figure placed upon any hogshead of tobacco by an inspector, or in any manner counterfeits any letter, mark, number, or figure, on any such hogshead of tobacco, shall forfeit and pay one hundred dollars for every such offense. *Id.* sec. 4343.

**Penalty against inspector for taking illegal fees, etc. :**

An inspector who accepts or receives, directly or indirectly, any gratuity or reward for anything done by him in pursuance of this chapter, other than his fees, as in this chapter defined, shall forfeit and pay the sum of three hundred dollars, and be disabled from holding the office of inspector; and whoever offers a gratuity, reward or bribe to an inspector for anything by such inspector to be done in pursuance of this chapter, shall, for every such offense, forfeit and pay three hundred dollars. *Id.* sec. 4344.

**Penalty against inspector for neglect :**

An inspector who neglects or refuses to attend, as directed by this chapter, unless prevented by sickness or unavoidable accident, shall forfeit and pay to the party aggrieved twenty dollars for every neglect or refusal, or shall be liable to an action by the party aggrieved, to recover all damages sustained by reason of any such neglect or refusal, together with costs. *Id.* sec. 4345.

**Duties of inspector :**

Every inspector shall unease and break every hogshead, barrel, package, case, or box of tobacco, or cause the same to be

done in his presence, which he may be called on to inspect, and weigh in not less than four different places; and if the said inspector and weigher is of the opinion that such tobacco is sound, clean, in good order and condition, and merchantable, he shall weigh or cause the same to be weighed in his presence, on scales with weights, which he shall mark or cause to be marked on the head, side or bulge thereof, with the name of the warehouse, the tare of the hogshead, barrel, box, or package, and quantity of net tobacco therein contained, and also mark on the head of the hogshead, barrel, or package, with the initials of the name of the owner, and the number of the hogshead, barrel, box, or package there inspected. *Id.* sec. 4346.

**Inspector to select samples, one for purchaser and one to be returned and preserved :**

The inspector shall select two fair samples of each hogshead, barrel, box, or package of tobacco, by him inspected, and passed as sound and merchantable, which samples shall consist of not less than six hands or bundles, and each of which he shall bind together with a cord, and attach a label thereto, on which shall be written the name of the person for whom, or in whose name the tobacco is inspected, together with the number of the package, the gross weight, tare and net weight of the tobacco, one of which samples shall be delivered to the purchaser of the tobacco, with a note or certificate hereinafter provided for, and the other of which samples said inspector shall retain and carefully preserve for one year after such inspection. *Id.* sec. 4347.

**Record of inspection to be kept :**

The inspector shall carefully enter, or cause to be entered, in a book to be provided and kept for that purpose, every hogshead of tobacco viewed, passed and marked by him, and the quality thereof, mark and warehouse number, with the gross, tare and net weight of all such tobacco. *Id.* sec. 4348.

**Re-assortment of tobacco rejected by inspector :**

If a hogshead of tobacco is brought to any warehouse for inspection, and the inspector refuse to receive and pass the same, the owner or other person bringing such tobacco will

undertake to pick and separate the good from the bad, the inspector shall allow the use of one or more of his prizes for prizing such tobacco, so separated and repacked in such hogsheads; and if there are several hogsheads of tobacco, belonging to several owners, to be packed, repacked and prized at any public warehouse, the owner or other person, whose tobacco is first examined and refused, on bringing the same, shall be first permitted to make use of such prize; and the same rule shall be observed in prizing all tobacco picked and prized as aforesaid. *Id.* sec. 4349.

#### **Penalty against inspector for appropriating samples, etc. :**

No inspector shall take and convert to his own use or otherwise dispose of any draughts or samples of tobacco drawn out of any hogshead, but the same shall be delivered to the owner or other person offering the same for inspection, under the penalty of seventy-five cents. *Id.* sec. 4350.

#### **Storage fees :**

When any hogshead, box, or case of tobacco has remained in any warehouse, licensed under this chapter, for a longer period than three months, the proprietor shall be entitled to charge additional storage on the same at the rate of twenty cents per month, for each hogshead, box, or case, and a lien is hereby created in his favor for such storage, and all other charges on all tobacco delivered at his warehouse. *Id.* sec. 4351.

#### **Warehouseman to give receipt :**

Proprietors of warehouses licensed under the provisions of this chapter shall immediately upon the delivery of every hogshead, box or case of tobacco at any such warehouse, weigh and give receipt for the same if required by the owner or person bringing the same, which shall be given up on the sale or re-delivery of such tobacco. *Id.* sec. 4352.

#### **Inspector's receipt :**

The inspector who passes any tobacco shall deliver to the owner as many notes as may be required, not exceeding one note or receipt for each hogshead or cask, which note or receipt shall express the time and place of reception, the mark, the ware-

house number, gross, tare and net weight for all tobacco inspected and passed whether of the first or second quality; the first quality to consist of tobacco clear of and unmixed with trash; and the tobacco for which such note calls shall be delivered to the owner or bearer thereof on demanding the same and giving up such note. *Id.* sec. 4353.

**Penalty against forging, etc., inspector's receipt :**

Any person who forges or counterfeits any receipt or note of any inspector, or alters the description of the quantity or quality of tobacco expressed in such receipt or note, or offers in transfer or sale such forged, counterfeit or altered receipt or note, knowing the same to be forged, counterfeited or altered, shall be proceeded against in the same manner, and be subject to the same punishment, as though he had forged a promissory note for the payment of money. *Id.* sec. 4354.

**Penalty against inspector for issuing false receipt :**

No inspector shall, on any pretense, give out any note or receipt for tobacco, unless he has received and passed the full quantity of tobacco, for which such note or receipt is given, under the penalty of one hundred dollars for every such offense. *Id.* sec. 4355.

**Placing in packages other substance than tobacco :**

Any person or persons, who shall intentionally place, or cause to be placed, in any hogshead, barrel, box, package, or parcel of leaf tobacco, any substance other than tobacco, with intent that the said hogshead, barrel, box, package, or parcel shall be exposed to sale, or sold, and with the intent that the purchaser thereof shall purchase the same in ignorance of the presence of such foreign substance, or if any person shall falsely pack, or cause to be falsely packed, in a manner commonly known as "nesting," any hogshead, box, package, or parcel of leaf tobacco with the intent that the same shall be exposed for sale or sold, and with intent that the purchaser thereof shall purchase the same in ignorance of its real character, or if any person shall deliver, or cause to be delivered, any hogshead, box, package, or parcel of tobacco, containing such foreign

substance, or falsely packed, and nested tobacco, to any warehouseman, commission merchant, or dealer in tobacco, or manufacturer thereof, to be sold knowing it to contain such foreign substance, or to be so falsely packed, or nested, with intent that the same shall be sold to purchasers ignorant of its real character, or if any person shall change or alter in any way any sample selected by the inspector, as provided in section *four thousand three hundred and forty-seven* with intent thereby to defraud any purchaser or other person, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay a fine of not less than one hundred, nor more than five hundred dollars, or be imprisoned in the jail of the county wherein the offense was committed, not less than thirty days, nor more than six months, or fined and imprisoned both, at the discretion of the court, and shall also be liable to the inspector and the person injured thereby in a civil action for the amount of such injury. *Id.* sec. 4355a.

**Proprietor of tobacco warehouse liable for failure of samples to represent package :**

The proprietor of any such commission leaf tobacco warehouse shall (each) be held liable to the purchaser of any hogshead, barrel, package, box or parcel of tobacco, inspected and weighed at his warehouse, for the failure of the samples drawn therefrom to represent the tobacco packed therein, and in like manner shall be liable for underweight existing in such tobacco inspected, and marked by such inspector as required by the provisions of this chapter. *Id.* sec. 4355b.

**Failure of proprietor of tobacco warehouse to give bond, etc. :**

Any proprietor of any such leaf tobacco warehouse, who refuses or neglects to procure a license, and appointment of such inspector and weigher of tobacco, at his warehouse, as provided for in section *four thousand three hundred and thirty-four*, or neglects or refuses to perform any of the duties required of him by the provisions of this chapter, shall forfeit and pay a penalty of not less than fifty nor more than one thousand dollars, at the discretion of the court; and each day's continuance in busi-

ness, after written notice of such omission, shall be deemed an additional offense within the provisions of this section. *Id.* sec. 4355c.

**Burglary—Attempts at burglary—Having possession of burglar's tools :**

Whoever, in the night season, maliciously and forcibly breaks and enters, or attempts to break and enter, any dwelling-house, kitchen, smoke-house, shop, office, store-house, ware-house, malt-house, still-house, mill, pottery, factory, water-craft, school-house, church or meeting-house, barn or stable, railroad car, car factory, station-house, hall or any other building, with intent to commit a felony, or with intent to steal property of any value, shall be imprisoned in the penitentiary not more than ten years, nor less than one year; and if any person shall have, or keep in his possession, any tools, implements, or other things used by burglars for house-breaking, forcing doors, windows, locks, or buildings, or other places where goods, wares, merchandise or money is kept, with the intention of using such tools or implements burglariously, shall be confined in the penitentiary not more than five years, nor less than one year. *Id.* sec. 6835.

**Above section construed :**

A house used exclusively for storing goods is a warehouse, although the building had been constructed and formerly used for another purpose, and although the goods were owned by the tenant. *Allen v. The State*, 10 O. S. 287.

**Entering house, etc., in day-time or night season, and attempting to commit felony—How punished :**

Whoever maliciously, either in the day-time or night season, enters any dwelling-house, kitchen, shop, store-house, malt-house, still-house, mill, office, treasury, bank, railroad car, pottery, water-craft, school-house, church or meeting-house, smoke-house, barn or stable, and attempt to commit a felony, shall be imprisoned in the penitentiary not more than two years nor less than one year. Bates' Annotated Ohio Stats. 1900, sec. 6836.

**Above section construed :**

Under the above a defendant was indicted for maliciously

entering a storehouse, and attempting to steal personal property of the value of more than thirty-five dollars. He was found guilty and sentenced to the penitentiary. A motion to reverse on the ground that the crime for which defendant was indicted was not embraced within the above section, *held* to have been properly overruled. *Griffin v. The State*, 34 O. S. 299.

**Breaking into building in day-time to steal :**

Whoever maliciously, in the day-time, breaks and enters any dwelling-house, kitchen, shop, store, ware-house, malt-house, still-house, mill, factory, pottery, water-craft, school-house, church or meeting-house, smoke-house, barn, stable, railroad car, car factory, depot, station-house, hen-house, wagon-house, sugar-house, boat-house, grain-house, or green-house, with intent to steal, shall be fined not more than three hundred dollars, or imprisoned not more than six months or both. Bates' Annotated Ohio Stats. 1900, sec. 6837.

## DECISIONS AFFECTING WAREHOUSEMAN.

## A.

*Bailment and sale—Mixing of grain—Consent of parties or custom of trade—Liability for loss.*

Where a warehouseman receives wheat, and by the consent of the owner, or in accordance with the custom of trade, mixes the wheat in a common mass with the other wheat in his warehouse, and with the understanding that he is to retain or ship the same for sale on his own account, at pleasure, and on presentation of the warehouse receipt is either to pay the market price thereof in money, or redeliver the wheat, or other wheat in place of it; the transaction is not a bailment but a sale, and the property passes to the depositary, and carries with it the risk of loss by accident. *Chase v. Washburn*, 1 O. S. 244. See *O'Dell, Assignee, v. Leyda et al.*, 46 O. S. 244.

*Same—Same—Receipt construed.*

A warehouseman received a large quantity of wheat from the plaintiff and issued a receipt in the following words: "New London, Ohio, August 18, 1891. Received in store from A. Gibb, 403 45-60 bushels of wheat, which we store at  $\frac{1}{2}$  cent per bushel per month, and we are to have at the market price when called for, unless we prefer to furnish the grain. Subject to the order of A. Gibb on the surrender of this receipt and the payment of charges. To be kept insured by us. No. 66. Dean & Lilly." Subsequently, the warehouseman went into the hands of a receiver and the warehouse and contents were destroyed by fire. The plaintiff demanded the wheat of the receiver and upon his refusal to deliver brought an action against him for the value thereof. It appeared that in accordance with the consent and understanding of the parties, the wheat was mingled with other wheat of like kind and quality and that the warehouseman had no doubt shipped the identical wheat received from the plaintiff prior to the destruction of his warehouse. *Held* that this transaction constituted a sale and not a bailment; it was a sale in which the warehouseman was to pay for the wheat either in money or in other wheat. The doctrine laid down in *Chase v.*

*Washburn*, 1 O. S. 244, followed. *Gibb v. Townsend, Recr.*, 9 C. C. O. 409.

*Same—Same—Bailment.*

Plaintiff stored wheat with a warehouseman and took therefor a receipt in the following words:

“BIG PRAIRIE, Sept. 9, '82.

“Rec'd of George Ledy 173 bu. 20-60 one hundred & seventy-three bus. twenty lbs. of No. 2 Wheat. Owner of stored wheat at their own risk.

“W. H. EASTERDAY & BRO.”

There was no agreement made that the wheat should be mixed with other wheat, or that the warehouseman might ship or sell or otherwise dispose of it; nor was there any specified time agreed upon which the wheat should remain in the warehouse, but it was to be kept until the plaintiff was ready to sell. There was no charge made for storage. The wheat was mingled with the wheat of others deposited and the warehouseman sold from the common mass. He always reserved, however, a greater quantity than that deposited with him but not the identical wheat. Subsequently the warehouseman made an assignment to the defendant, and the sheriff issued an execution against the defendant attaching the wheat as the property of the warehouseman in an action against him. Whereupon, the plaintiff depositor brought an action of replevin against the assignee and sheriff for the amount of wheat. It was *held* that the receipt which the warehouseman had given to the defendant, interpreted according to its terms in commercial usage, constituted a bailment and not a sale and that the plaintiff's title was not extinguished or transferred to the warehouseman when the wheat was mixed, with the consent of the parties, with wheat of like quality and grade stored by others on like terms or, with the wheat belonging to the warehouseman. Upon the same principle, where a warehouseman, who has received on deposit in his warehouse, the grain of others, to be stored at their risk, mixes it with his own, and without authority from them, sells from the common mass, but never more than his

own quantity, always reserving enough to return to the depositors their proper quantity of the same grade and quality, but not the grain so deposited, the depositors may claim the grain so substituted for theirs; and, if it be for their benefit to accept the substitution, such acceptance will be presumed, and their title upheld against the warehouseman and his assignee for the benefit of creditors. *O'Dell, Assignee, v. Ledy et al.* 46 O. S. 244; *Inglebright v. Hammond*, 19 O. S. 337.

*Same—Same—Questions for the jury.*

The plaintiff brought an action against the defendant warehouseman for the value of a quantity of wheat which he alleged he, as executor, had sold to the defendant. He received therefor weigher's receipt in the following words :

“Received of J. C. Plank, Admr., load of wheat, eleven bushels, five pounds. Not transferable. Present this at office.

.....  
“Weigher.”

which was afterward exchanged for storage receipt a copy of which is as follows:

“James & Neer,  
“Dealers in Grain & Seed.

“No. 240. DEGRAFF, O., January 5, 1886.

“Received of Joseph C. Plank, four hundred and fifty-two bushels and 25 pounds of wheat (452 35-100 bushels). Subject to the following rules:

“Storage free until June 1, 1886. One cent per bushel per month or any part thereafter. All grains stored at owner's risk. We will not be responsible for loss or damage in any way. Grain taken out of house by owner, five cents per bushel and usual storage.

“JAMES & NEER.”

Without fault of the defendant the warehouse and contents were destroyed by fire. The contention of the defendants was that the transaction was a bailment, and that, therefore, they were not liable for the value of the wheat. At the trial of the case the court instructed the jury, after the evidence had been given,

to find for the plaintiff, for under the undisputed facts the transaction was a sale. Judgment was rendered upon the verdict which was affirmed by the circuit court and the case brought to the supreme court by writ of error. It appeared from the writ that evidence had been offered which tended to show the existence of a custom of dealing in vogue for many years in the vicinity, to the effect that grain deposited in a warehouse for which weigher's receipts were given was regarded as grain in store until such receipts were presented to the office and the holder then had the option to exchange weigher's receipt for a storage receipt and continue the storage upon the terms specified in that form of receipt, or, to sell at the price ruling at the time that such weigher's receipts were presented; and that the receipt of the wheat and the giving of weigher's receipt did not constitute a sale of the wheat, but that it remained the property of the depositor until the weigher's receipts were presented at the office and an election to sell made. The trial court assumed that upon the undisputed facts, a sale was conclusively shown, and that a question of law only remained. It was *held* that the court erred in this and that the question should have been submitted to the jury to determine if the understanding between the parties was that the contract was to be a bailment or a sale. That the jury should have passed upon the question as to whether or not the custom, as claimed by the defendant, actually existed and was known to the plaintiff. To determine also from the other facts appearing, that the understanding was, that although the wheat might be mingled with other wheat belonging in part to the plaintiff and part to defendant, yet defendants were to sell from the common mass from time to time, their portion only, always leaving sufficient on hand to satisfy all depositors. And if the jury should find that the defendants observed this understanding and, especially, if, in addition to the foregoing, they further found that a distinct understanding of the parties was, by virtue of such custom, that the wheat was to be regarded as in store until the plaintiff should elect to make the sale of it, then, if it appeared that no demand for the pay had been made by the presentation of receipts at the office before the fire, the jury would have been justified in find-

ing for the defendants. Therefore, the case was reversed and a new trial in accordance with instructions ordered. *James & Neer v. Plank, Exr.*, 48 O. S. 255; *Inglebright v. Hammond*, 19 O. S. 337.

### B.

*Ordinary care—Questions for the court and jury—Not liable for loss resulting from act of God.*

Warehousemen are obliged to exercise reasonable and ordinary care in the custody and safe-keeping of property intrusted with them. Such care must have reference to the surrounding conditions and circumstances. The duty of a warehouseman is a matter of law for the court, what was done by him is a question of fact for the jury. Warehousemen are not liable for the loss or injury to goods resulting from the act of God or the public enemy which could not have been prevented by the exercise of ordinary care. *Backus & Sons v. Start et al.*, 13 Fed. Rep. 69.

### I.

*Commingling and changing identity of wheat—Warehouseman liable.*

In case of a regular deposit of wheat with a warehouseman, which required of the depositary the use of ordinary diligence in taking care of the wheat, and a redelivery of the same, on demand, to the depositor, on being paid a reasonable compensation for his services, the warehouseman would be liable to the depositor for the value of the wheat, in case he mixes it with other wheat in his warehouse, and ships the same for sale on his own account, notwithstanding he may supply the place of the depositor's wheat by other wheat procured and deposited in his warehouse; and the destruction by accident of the warehouse and the wheat supplied to take the place of the depositor's wheat, will not protect the warehouseman from liability to the owner. *Chase et al. v. Washburn*, 1 O. S. 244.\*

### N.

*Counterclaim—Evaporation—Conversion—Trover.*

The plaintiff deposited oil with the defendant upon a definite

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\* NOTE. "The case of *Chase v. Washburn*, 1 Ohio State, 244, has long been regarded as a case settling the law arising upon questions in cases of this kind." *Gibb v. Townsend, Rec'r*, 9 C. C. O. 409.

agreement as to the amount to be allowed for evaporation, and also as to rates to be charged by the defendant for storage. An action in trover was brought against the defendant warehouseman for his failure to deliver the oil on demand and the plaintiff sought to enforce the agreement of storage. The defendant set up as a defense the terms and conditions upon which it was liable to redeliver the oil; setting forth the terms of the agreement, so far as they were binding on the plaintiff. Demurrer was filed to the answer which was sustained and judgment rendered for the plaintiff. It appeared that the petition alleged that the defendant wrongfully and unlawfully converted the oil to its own use. The court *held* that such an attempt to turn the case from one of contract to one of tort, and thereby to exclude set-offs, could not be allowed. That the instruction of the court that they were to consider the receipts and to allow such deductions in damages as they should find the *reasonable* charge for storage amounted to and also *reasonable* deduction for evaporation was clearly in error. If the receipts held in evidence and the terms were binding on the parties, they furnished the rule of liability between them. Instead of *reasonable* allowances and *reasonable* charges, the defendant was entitled to the actual allowances and the actual charges agreed upon in the receipt for storage. Therefore, judgment was reversed. *Cow Run Co. v. Lehmer*, 41 O. S. 384.

#### Q.

*Warehouse receipt—By debtor against his own goods—Void as to other creditors.*

A firm, engaged in the business of slaughtering hogs and packing ham, borrowed money and issued to the lender, as security for the notes given in payment thereof, two receipts which were alleged to be warehouse receipts, for a large quantity of ham then in the firm's pork-house. The goods were marked and set apart in the pork-house with the name of the lender thereon. Subsequently the firm, without the knowledge of the lender, the plaintiff herein, sold the pork represented by the receipts and applied the proceeds to the payment of an indebtedness due the defendant bank. This action was brought by the lender against the bank on the ground that the

warehouse receipts had passed the title to the pork from the firm of packers to him. The court instructed the jury that if the papers called warehouse receipts were in reality given by the firm to the lender "simply by way of security for a loan of money made by him to them, and not otherwise, that the bank was not liable for it was a creditor of the firm at the time of the issuance of these receipts." It was *held* on appeal that the verdict given for the defendant and the above charge was right. That the hams in question were not pledged to the lender for the reason that he did not have possession thereof and that the receipts were not warehouse receipts such as would pass possession by delivery; that there was nothing in the statute in force at the time of this transaction relating to the warehouse receipts which affected the question to be decided. It was further *held* that as to third persons, other than creditors of the firm and subsequent purchasers and mortgagees in good faith, that the plaintiff had acquired an interest in the hams, but that the instruments not being warehouse receipts were not binding on third persons who were creditors of the firm at the time of the transaction. By statutes in force at the time in order to secure a valid mortgage of goods and chattels there must be an immediate delivery followed by an actual and continued possession of the things mortgaged, and further, the mortgage must be recorded with the township clerk, otherwise the same would not be valid against creditors of the mortgagor and subsequent purchasers and mortgagees in good faith. The firm here had never been engaged in the business of warehousemen and there was no record made of the instruments in question. Therefore the judgment given for the defendant was affirmed. *Thorne v. First National Bank*, 37 O. S. 254.

*Same—Estoppel in pais—Bona fide holder.*

The defendants, to whom certain warehouse receipts had been issued by one conducting a distillery with which there was connected a government bonded warehouse, negotiated a sale of the whiskey represented by the receipts. The purchaser, B. & Co., declined to accept the original receipts with the note for the purchase money attached thereto, but insisted upon having such a receipt as would indicate possession and apparent title

to the goods without conditions save as to the payment of the government tax and storage. Such a receipt was issued and delivered to B. & Co. by the defendants. B. & Co. accepted certain drafts drawn on them by the defendants for the purchase money. The receipts which the defendants gave to B. & Co. were in form warehouse receipts containing the name of the warehouseman and stating in the body thereof that the whiskey was held for the account of "and subject to the order of B. & Co. Deliverable only on return of this receipt to us properly indorsed, and on payment of United States government tax and charges on same." B. & Co. failed to pay the drafts at maturity, they became insolvent and the plaintiff purchased the warehouse receipts from one to whom they had been pledged by B. & Co. This purchase was made in good faith and without notice of any claim of the defendants for the unpaid purchase price. On the above stated facts it was *held* that the defendants were estopped to set up their claim for purchase price by their act in issuing the receipts which the plaintiff had purchased in good faith. The plaintiff had no knowledge that the whiskey had not been paid for nor that the real warehouse receipts were in the hands of the defendants. Therefore, judgment which had been given below for defendant was reversed. *Ensel v. Lery & Bro.*, 46 O. S. 255.

*Same—Not a negotiable instrument.*

A receipt given by a warehouseman for property placed in his possession for storage is not, in a technical sense, like a bill of exchange, a negotiable instrument, but it merely stands in the place of the property it represents, and a delivery of the receipt has the same effect in transferring the title to the property as the delivery of the property. *Second National Bank v. Walbridge*, 19 O. S. 419.

*Same—Issued to factor—Collateral security—Bank protected when bona fide holder.*

The owner of a quantity of flour sent the warehouse receipt therefor to his factor for the purpose of sale. The factor, without authority from the owner, pledged the receipt to secure

a personal loan made to him. The receipt was not pledged to secure an antecedent debt or demand. The bank in good faith loaned the money and accepted the warehouse receipt as security therefor, and made an agreement for the disposal of the flour. It was *held* that under the terms of the act of March 12, 1844, secs. 3 and 4, in force at the commencement of the action that the factor was to be regarded as the true owner of the flour and that such transfer and agreement were valid and that the bank was entitled to hold the flour as security for the payment of the loan. *Cleveland, Brown & Co. v. Shoeman*, 40 O. S. 176.

*Same—Same—Action for conversion by assignee.*

The defendant, a warehouseman, issued warehouse receipts to the depositor of a large quantity of lard. Such receipts were assigned to and pledged with the plaintiff bank as security for advances made by it to the owner of the lard. The defendant afterward delivered the lard to the owner and did not require the return of the receipts. The receipts were in form negotiable. On the above stated facts it was *held* that the defendant was liable to the plaintiff for the value of the property which he had allowed to be removed from his warehouse. *First National Bank of Cincinnati v. Bates*, 1 Fed. Rep. 702.

*Same—Same—National bank may hold warehouse receipt as collateral.*

A national bank made a loan on a warehouse receipt as collateral security. Under the United States Revised Statutes pertaining to national banks, it was *held* that such a bank may lawfully make a loan and take as collateral security therefor a warehouse receipt representing personal property. *Cleveland, Brown & Co. v. Shoeman*, 40 O. S. 176.

*Same—Effect of statement in receipt that the bailor has a lien on goods for full cost thereof—Goods levied on while stored.*

In an action to recover damages for the wrongful levy upon property stored with a warehouseman the plaintiff in order to prove his title to the property offered in evidence thirteen warehouse receipts which among other things stated that the ware-

houseman agreed to hold the goods subject to the order of the plaintiff he having a lien thereon for the full cost of the same, it was *held* that the general property in the goods and the right of possession passed to the plaintiff under such warehouse receipts and that he was therefore entitled to compensation for the time that he was deprived of their possession by the sheriff. *Gibson, Stockwell & Co. v. The Chillicothe Bank*, 11 O. S. 311. See *Thome v. First National Bank*, 37 O. S. 254, which is distinguished from the above.

*Same—Duplicate—Issued by mistake—Good defense.*

A warehouseman innocently issued duplicate receipts to the owner for property stored with him and the plaintiff, the assignee of the second receipt, obtained possession of the goods from the warehouseman. Subsequently the assignee of the first receipt recovered the goods from the plaintiff in an action of replevin. It was *held* in the action brought by the assignee of the second receipt against the warehouseman that the latter would be permitted to show as against the plaintiff the mistake in the issuance of receipts as a defense to the action, there being no privity between the plaintiff and the defendant. *Second National Bank, etc., v. Walbridge*, 19 O. S. 419.

## CHAPTER XXXVII.

**OKLAHOMA.**

## LAWS PERTAINING TO WAREHOUSEMEN.

An Act providing for the organization of public warehouses, and to regulate the warehousing and inspection of grain in public warehouses and otherwise in the territory, and providing for the appointment of grain inspectors.

*Be it enacted by the Legislative Assembly of the Territory of Oklahoma:*

**Chief inspector—Appointment :**

It shall be the duty of the governor of the territory of Oklahoma, on or before June first after the passage of this act, to appoint a suitable person who shall not be interested, directly or indirectly, in any public warehouse in this territory, who shall be a grain expert, and who shall be known as the chief inspector of grain for the territory of Oklahoma, whose term of service as such shall continue for two years from the date of his appointment under this act, and until his successor is appointed and qualified. Laws, Oklahoma, 1899, ch. 27, p. 199, sec. 1.

**Supervision :**

It shall be the duty of the chief inspector to have general supervision of the inspection of grain as required by this act or the laws of the territory. *Id.* sec. 2.

**Public warehouses :**

Public warehouses shall embrace all warehouses, elevators and granaries in which is stored grain in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots cannot be accurately preserved: *Provided*, That no warehouse,

elevator or granary with a capacity of less than 25,000 bushels measurement, shall be considered a public warehouse. *Id.* sec. 3.

### **License to operate :**

The proprietor, lessee or manager of any public warehouse shall be required, before transacting any business in such warehouse, to procure, from the district court of the county in which such warehouse is situated a license permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this territory, which license shall be issued by the clerk of said court upon written application, which shall set forth the location and name of such warehouse and the individual name of each person interested as owner or principal in the management of the same, or, if the warehouse be owned or managed by a corporation, the names of the president, secretary, and treasurer of such corporation shall be stated, and the said license shall give authority to carry on and conduct the business of a public warehouse in accordance with the laws of this territory, and shall be revocable by the said court upon a summary proceeding before the court upon the complaint of any person, in writing, setting forth the particular violation of law, to be sustained by satisfactory proof to be taken in such manner as may be directed by the court. *Id.* sec. 4.

### **Warehouseman—Bond :**

The person or persons receiving a license as herein provided shall file with the clerk of the court granting the same a bond to the people of the territory of Oklahoma, with good and sufficient surety to be approved by said court, in the penal sums as per the following schedule of capacities by measurement: For a public warehouse with a capacity not exceeding 100,000 bushels, \$25,000; for a public warehouse with a capacity of more than 100,000 bushels and not exceeding 200,000 bushels, \$40,000; for a public warehouse with a capacity of more than 200,000 bushels and not exceeding 300,000 bushels, \$60,000; for a public warehouse with a capacity of more than 300,000 and not exceeding 400,000 bushels, \$75,000, conditioned for

the faithful performance of his or their duties as public warehouseman or warehousemen, as surety for any penalties found by due course of law for violation of any clause of this act, and his or their full and unreserved compliance with the laws of this territory in relation thereto. *Id.* sec. 5.

#### **Conducting warehouse without license :**

Any person or persons who shall transact the business of public warehouseman or warehousemen, without first procuring license and giving a bond as herein provided, or who shall continue to transact such business after such license had been revoked, or such bond may have become void or found insufficient surety for the penal sum in which it is executed by the court approving the same (save only that he may be permitted to deliver property previously stored in such warehouse) shall be guilty of a misdemeanor, and upon conviction be fined in a sum not less than \$100, nor more than \$500 for each and every day such business is carried on, and the court that issued may refuse to renew any license or grant a new one to any person or persons whose license has been revoked within one year from the time same was revoked. *Id.* sec. 6.

#### **Receiving grain :**

It shall be the duty of the person or persons doing a public warehouse business under this act, to receive for storage any grain that may be tendered to him or them in the usual manner with which warehouses are accustomed to receive the same in the ordinary and usual course of business, and to not discriminate between persons desiring to avail themselves of warehouse facilities, and that the schedule of charge for such warehouse service shall be uniform, regardless of quantities of lots so offered or received. *Id.* sec. 7.

#### **Inspection, receipt :**

Receipts of grain by public warehouses in all cases shall be inspected and graded by a duly authorized inspector and shall be stored with grain of a similar grade received as near the same time as may be; but if the owner or consignee so requests and the warehouseman consents thereto, his grain of the same grade

may be kept in a bin by itself apart from that of the general stock of the warehouse, which bin shall be marked "special," with the name of the owner and the quantity and grade of same, and the warehouse receipt issued for same shall state upon its face that the grain is stored in a special bin, giving the number of same and the quantity and grade of the grain so stored. *Id.* sec. 8.

#### **Grain not delivered unless inspected :**

No grain shall be delivered from a public warehouse constituted by this act unless it be inspected by a duly authorized inspector, and found to be of grade called for by receipt presented for such delivery. *Id.* sec. 9.

#### **Different grades not mixed :**

Public warehousemen shall not mix any grain of different grades together, nor select or mix different qualities of the same grade for the purpose of storing or delivering the same, nor shall they deliver or attempt to deliver grain of one grade for grain of another grade, nor in any way tamper with grain while in a public warehouse in his or their possession or custody, nor permit the same to be done by others with the view or result of profit to any one; and in no case shall grain of different grades, either from the general stock or from special bins, be mixed together while in store or control of such public warehousemen. *Id.* sec. 10.

#### **Preservation of grain :**

Whenever it may be necessary, in order to preserve the condition of any bin or lot of grain stored in a public warehouse, to run the contents of said grain (bin) through machinery to air, clear or otherwise improve or preserve such condition, and it is so desired by the owner or warehouseman, this may be done, but in such manner as will insure the contents of each bin or lot intact, and of the same grade as when stored; but this shall not be done except under the supervision of an authorized inspector under this act. *Id.* sec. 11.

#### **Grain refused when :**

Nothing of this act shall be construed so as to compel the

receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where such warehouse is necessarily closed. *Id.* sec. 12.

#### **Not mixed until inspection :**

In all places where there are legally appointed inspectors of grain, no proprietor or manager of a public warehouse shall be permitted to receive any grain and mix the same with grain of other owners in the storage thereof, or stored in special bins, until the same shall have been inspected and graded by such inspector. *Id.* sec. 13.

#### **Combination with carrier prohibited :**

No warehouseman, agent or manager of a public warehouse shall enter into any combination, agreement or understanding with any railroad, transfer or other carrying corporation, or with any person or persons, by which the property of any person is to be delivered to any public warehouse for storage, or other purpose, contrary to the direction of the owner, his agent or assignee. *Id.* sec. 14.

#### **Warehouse receipt—Contents :**

Upon application of the owner or consignee of grain stored in a public warehouse, the same being accompanied with evidence that all charges which may be a lien upon such grain, including charges for inspection, have been paid, the warehousemen shall issue to the person entitled thereto a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store to be stored with grain of the same grade by inspection received at about the date of the receipt, and that it is deliverable upon the return of the receipt properly indorsed by the person to whose order it was issued, and upon the payment of the charges accrued for storage. All warehouse receipts for grain issued from the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same

warehouse during any one year, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked upon its face "duplicate." If the grain for which the receipts are issued was received from railroad cars, the number of each car shall be stated in the receipt, with the amount each car contained; if from wagons or other means, it shall be so stated; if having been bulked from sacks, the manner of its receipt shall be stated upon the face of such receipt for grain stored. *Id.* sec. 15.

#### New receipt:

No warehouse receipt shall be issued except upon the actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipt; nor shall any receipt be issued for a greater quantity of grain than was contained in the lot stated to have been received; nor shall more than one receipt be issued for the same lot of grain except in cases where receipts for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder; but such new receipt shall bear the same date as the original, and shall state on its face that it is the balance of receipt of the original number, and the receipt upon which a part has been delivered shall be cancelled in the same manner as if the grain it called for had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store; and the new receipts shall state on their face that they are parts of other receipts or a consolidation of other receipts as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued explaining the change; but no consolidation of receipts of dates differing more than ten days shall be permitted, and all new receipts issued for old ones cancelled as herein provided shall bear the

same dates as those originally issued as near as may be. *Id.* sec. 16.

#### **Liability not limited :**

No warehouseman under this act shall insert, in any receipt issued for grain received, any language in any wise limiting or modifying his responsibility or liability as imposed by the laws of this territory. *Id.* sec. 17.

#### **Receipt cancelled :**

Upon delivery of grain from store upon any receipt, such receipt shall be plainly marked across its face with the word "cancelled," with the name of the person cancelling the same, and shall thereafter be void and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. *Id.* sec. 18.

#### **Receipt transfer :**

Warehouse receipts for property stored in warehouses created by this act, as herein described, shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another. *Id.* sec. 19.

#### **Fraudulent receipt—Penalty for issuing :**

Any warehouseman of any public warehouse created by this act, employee in such warehouse, or owner or manager connected with same, who shall be guilty of issuing any warehouse receipt for any property not actually in store at the time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or inspected grade of such property, or who shall remove any property from store (except to preserve it from fire or other sudden danger), without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall, when convicted thereof, be guilty of a felony, and shall suffer, in addition to other penalties prescribed by this act,

imprisonment in the penitentiary for not less than two nor more than ten years. *Id.* sec. 20.

#### **Receipt returned—Grain delivered :**

Upon the return of any warehouse receipt issued by persons in charge of warehouses created by this act, and the demand for the delivery of property represented by such receipt, duly indorsed (if not presented by original holder), accompanied by the tender of all proper charges upon the property represented, such property shall be immediately deliverable to the holder of such receipt, and it shall not be subject to further charges for storage after demand for such delivery shall have been made, and deliveries shall be made by the warehouseman in the order in which such receipts are presented and demand for deliveries made. *Id.* sec. 21.

#### **Storage rates—Publication of :**

The manager of every public warehouse created by this act shall be required, within ninety days after the passage of this act, and during the first week in January of each year thereafter, to publish, in one or more of the newspapers published in the vicinity in which such warehouse is situated, a schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased during the year, and such published rates or any published reduction of them shall apply to all grain received into such warehouse from any person or source, and no discrimination shall be made directly or indirectly, for or against any person, in any charges made by such warehouseman for the storage of grain. The maximum charge for storage and handling of grain, including the cost of receiving and delivering, shall be for the first ten days or part thereof, two cents per bushel, and for each ten days or part thereof after the first ten days, one half of one cent per bushel. *Id.* sec. 22.

#### **Warehouseman's statements—Reports :**

The manager of every public warehouse created under this act, shall, on or before Tuesday morning of each week, cause to be made out, and keep posted in the business office of his

warehouse in a conspicuous place, a statement of the amount of each kind and grade of grain in store in his warehouse, at the close of his business on the previous Saturday. He shall also be required to furnish weekly, to the board of commissioners hereinafter provided for, a correct statement of the amount of each kind of grain and grade of same received in store in such warehouse during the previous week, also the amount of each kind of each grade of grain delivered or shipped by such warehouse during the previous week, and what warehouse receipts have been cancelled upon which the grain has been delivered during such week, giving the number of each receipt and the amount, kind and grade of grain received and shipped upon each; how much through grain in transit to points outside of the territory, if any, may have been received for transshipment for which warehouse receipts have not been issued, was so shipped or delivered, and the kind and grade of it, when and how such unreceipted grain was received. He shall also make weekly reports to the said commissioners of receipts and deliveries of such unreceipted grain, if any, received for the account of owners of such warehouse, either directly or indirectly, with the amount, kind and grade of same. He shall also report weekly to the commissioners what receipts, if any, have been cancelled and new ones issued in their stead as herein provided for. He shall also make such further statements to the commissioners regarding receipts issued or cancelled as may be necessary for the keeping of a full and correct record of all receipts issued and cancelled and of grain received and delivered. *Id.* sec. 23.

#### **Loss or damage by fire—Responsibility—Preservation of grain :**

The owners of public warehouses, under this act, shall not be held responsible for any loss or damage to property by fire while in their custody: *Provided*, Reasonable care and vigilance be exercised to protect and preserve the same; nor shall they be held liable for damage to grain by heating, if it can be shown that proper care has been exercised in handling and storing the same, and that such damage was the result of causes beyond their control; but unless public notice be given that some por-

tion of the grain in store is out of condition or becoming so, grain of equal quality to that received shall be delivered on all receipts presented. In case, however, any warehouseman shall discover that any portion of the grain in his warehouse is out of condition or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice by advertisement in a daily newspaper, if one is published in the city or town in which such warehouse is situated, and by posting a notice in the most public place for such a purpose in such city or town of its actual condition as near as can be ascertained. Such notice shall state the kind and grade of the grain, and give the number of the bins in which it is stored, and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers and amounts and dates of each, which receipts shall be those of the oldest dates then in circulation or uncancelled, the grain represented by which has not previously been declared or received for as out of condition. The enumeration of receipts and identification of grain so discredited shall embrace as near as may be as great a quantity of grain as is contained in such bins, and such grain shall be delivered upon the return and cancellation of the receipts so declared to represent it, upon the request of the owner thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. In case the grain declared out of condition, as herein provided for, shall not be removed from store by the owner thereof within two months from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice by advertisement in a daily newspaper, if there be one published in the city or town where such warehouse is located. *Id.* sec. 24.

#### **Warehouseman—Negligence—Responsibility :**

Any warehouseman proven guilty of any act of negligence,

the effect of which is to depreciate the condition of property stored in the warehouse under his control, shall be held responsible upon the bond given for such warehouse, and in addition thereto, the license given for such warehouse shall be revoked by a proceeding as hereinbefore stated. *Id.* sec. 25

**Statement under oath :**

It shall be the duty of every owner, lessee and manager of every public warehouse in this territory to furnish, in writing, under oath, at such time as the commissioners hereinafter provided for shall require and prescribe, a statement concerning the condition and management of his business as such warehouseman. *Id.* sec. 26.

**Copy of this act posted :**

All proprietors or managers of public warehouses in this territory shall keep posted up at all times in a conspicuous place in their offices, and in each of their warehouses, a printed copy of this act. *Id.* sec. 27.

**Warehouse open to public—Scales tested :**

All persons owning property, or who may be interested in the same, stored in any public warehouse created by this act, and all duly authorized inspectors of such property, shall at all times during ordinary business hours be at full liberty to examine any and all property stored in any public warehouse in this territory, and all proper facilities shall be extended to such persons by the warehouseman, his agents and servants for an examination, and all parts of public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or by any authorized inspector of such property. All scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized inspector, the expense of such tests by inspector to be paid by the warehouseman where scales are so tested, and no scales shall be used for the weighing of grain after being found incorrect, until put in order and found accurate and approved for further use by an authorized inspector. *Id.* sec. 28.

**Violation—Misdemeanor :**

A violation of any of the preceding provisions of this act (except in cases covered by sections six, twenty and twenty-five) by any warehouseman, owner, lessee, manager or employee of public warehouses created by this act, is declared a misdemeanor, and, upon conviction thereof, the violators shall be fined not less than one thousand nor more than five thousand dollars, one fourth of such fine to be awarded and paid to the informer of such misdemeanor. *Id.* sec. 29.

**County attorney, duties of :**

In all criminal prosecutions against a warehouseman for the violation of any of the provisions of this act, it shall be the duty of the county attorney of the county in which such prosecution is brought to prosecute the same to a final issue in the name of and on behalf of the people of the territory of Oklahoma. *Id.* sec. 30.

**Bond liable :**

If any warehouseman shall be guilty of a violation of any provision of this act, to the injury of any person by such violation, it shall be lawful for such injured person to bring suit in any court of competent jurisdiction, upon the bond of such warehouseman, in the name of the people of the territory of Oklahoma, to the use of such person. *Id.* sec. 31.

**Deputy chief inspector-Assistants :**

The said chief inspector shall be authorized to appoint a suitable person as deputy chief inspector, to be acting chief inspector in the absence of the chief inspector. He shall also be authorized to appoint assistant inspectors, who shall not be interested in any public warehouse in this territory: *Provided*, That he shall not appoint more than three assistant inspectors. *Id.* sec. 32.

**Oath and bond—Chief inspector :**

The chief inspector shall, upon entering upon the duties of his office, be required to take an oath that he will faithfully and strictly discharge the duties of his said office of inspector, according to law and the rules and regulations prescribing his

duties. He shall execute a bond to the people of the territory of Oklahoma in the penal sum of ten thousand dollars, with sureties to be approved by the board of commissioners herein-after provided for, conditional that he will pay all damages to any person or persons who may be injured by reason of his neglect, refusal or failure to comply with the law and the rules and regulations of this act. *Id.* sec. 33.

#### **Oath and bond—Deputy and assistant's liability :**

The deputy chief inspector and all assistant inspectors appointed under this act shall be under the supervision of the chief inspector, to whom they shall report in detail all service performed by them at the close of each working day. The deputy chief inspector and each assistant inspector shall take the same oath as the chief inspector, and execute a bond in the penal sum of twenty-five hundred dollars, with like conditions, and to be approved in like manner as provided for the bond of the chief inspector, which bond shall be filed in the office of the secretary of the territory. Suit may be brought upon bonds of either the chief inspector, deputy chief inspector or assistant inspectors in any court having jurisdiction thereof, in the county or city where the defendant resides, for the use of any person injured by any act of said chief inspector, and deputy chief inspector, or assistant inspector. *Id.* sec. 34.

#### **Board of commissioners—Rules—Fees :**

The chief inspector of grain, the deputy chief inspector, assistant inspectors and other employees in connection therewith shall be governed in their respective duties by such rules and regulations as may be prescribed by a board of commissioners, consisting of the territorial secretary, territorial auditor and attorney general of the territory, and the said commissioner shall have full power to make all proper rules and regulations for the inspection of grain not inconsistent with this act, to fix the charges for the inspection of grain and other duties of said chief inspector, deputy chief inspector, and assistant inspectors, and to make and prescribe rules for the collection of the same, which charges shall be regulated in such manner as will, in the judgment of the said board of commissioners, produce suffi-

cient revenue to meet the necessary expenses of the service of inspection, and no more. *Id.* sec. 35.

### **Compensation :**

It shall be the duty of said board of commissioners to fix the amount of compensation to be paid to the chief inspector, deputy chief inspector and assistant inspectors, and all other persons employed in the service of inspection, and prescribe the time and manner of payment: *Provided*, That the salary of the chief inspector shall not exceed one thousand dollars per annum, deputy chief inspector, not to exceed six hundred dollars per annum, and the assistant inspectors not to exceed three hundred dollars per annum each; and the board of commissioners not to exceed one hundred dollars per annum each: *And, provided further*, That the territory of Oklahoma shall not be liable for the payment of any of the above salaries in any manner whatsoever. *Id.* sec. 36.

### **Neglect or fraudulent conduct—Misdemeanor :**

Any duly authorized chief inspector, deputy chief inspector, or assistant inspector of grain under this act who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other valuable consideration, directly or indirectly, for any neglect of duty as such chief inspector, deputy chief inspector, or assistant inspector, or any person who shall improperly influence any chief inspector, deputy chief inspector, or assistant inspector of grain under this act in the performance of his duties as such inspector shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum not less than five hundred dollars nor more than one thousand dollars or shall be imprisoned in the county jail not less than six nor more than twelve months, or both such fine and imprisonment, in the discretion of the court. *Id.* sec. 37.

### **Imposter—Misdemeanor :**

Any person who shall assume to act as an inspector of grain who has not been duly appointed, sworn and given bond under this act, shall be held to be an imposter, shall be guilty of a

misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than three months nor more than six months, or both such fine and imprisonment, at the discretion of the court, for each and every offense so committed. *Id.* sec. 38.

#### **Inspector removed :**

Upon complaint in writing of any person to the said board of commissioners, supported by satisfactory proof, that any person appointed or employed by said chief inspector under the provisions of this act has violated any of the rules prescribed for his government, or has been guilty of any improper official act, or has been found incompetent for the duties of his position, such person shall be removed from his employment by the same authority that appointed him, and his place shall be filled, if necessary, by a new appointment. When it shall be deemed necessary to reduce the number of persons appointed or employed, their terms of service shall cease under the orders of the same authority by which they were appointed or employed. *Id.* sec. 39.

#### **Appeal—Committee :**

In all matters involving doubt on the part of the chief inspector, the deputy chief inspector or any assistant inspector, as to the proper inspection into or out of any warehouse created by this act, or in case of any owner, consignee or shipper of grain, or any warehouse manager shall be dissatisfied with the decision of the chief inspector, deputy chief inspector, or any assistant inspector in matters pertaining to inspection, an appeal may be made to the committee hereinafter provided for, who shall at once convene, and whose decision, after a careful inquiry into the questions at issue, shall be final. *Id.* sec. 40.

#### **Arbitration committee appointed :**

The board of commissioners shall, as soon after the passage of this act as is practicable, appoint committees for the adjustment of differences between inspectors and warehousemen, or owners or representatives of grain, arising from the acts of

inspectors, each committee to consist of three persons well known as experts in grain; and a committee shall be appointed in each city or town where public warehouses under this act are located, said committees to be known as the arbitration committees of the board of commissioners. *Id.* sec. 41.

#### **Board of commissioners to make rules :**

The board of commissioners shall make equitable and legal rules governing said committee's procedure, in the arbitrations, the manner and amount of compensation, the method of appointment and terms of service. *Id.* sec. 42.

#### **Standard of grades—Changes in notice :**

The board of commissioners, as soon after the passage of this act as is practicable, shall establish a proper number and standard of grades for the inspection of grain, with due regard to the prevailing usages of the markets of this territory, the interests of both producers and dealers, and as near as may be conform with standards of grade adopted by reputed leading markets of the United States: *Provided*, No modification or changes of grades shall be made or any new ones established without public notice being given of such contemplated changes, for at least twenty days prior thereto, by publication in three daily newspapers, one of which shall be printed in German, printed in this territory: *And, provided further*, That no mixture of old or new grades, even though designated by the same name or distinction, shall be permitted while in store. *Id.* sec. 43.

#### **Report of commissioners :**

The board of commissioners shall, on or before the first day of January of each year, make a report to the governor of their doings for the preceding year, to contain such facts as will disclose the actual working of the system of the warehouse business of this territory as contemplated by this act, and such suggestions thereto as to them may appear pertinent. *Id.* sec. 44.

#### **Inspection of warehouse by commissioners :**

Said commissioners shall examine into the condition and management, and all other matters concerning the business of warehouses under this act in this territory, so far as the same

may pertain to the relations of such warehouses to the public, and to the security and convenience of persons doing business therewith, and to ascertain whether the officers, directors, managers, lessees, agents and employees comply with the laws of this territory now in force or to be in force concerning such warehouses. Whenever it shall come to their knowledge, or they shall have reason to believe, that any law governing the public warehouses of this territory under this act is being or has been violated, they shall cause to be prosecuted or prosecute all persons guilty of such violation. To enable such commissioners efficiently to perform their duties under this act, it is hereby made their duty to cause one or more of their number, at least once in six months, to visit each warehouse in this territory and to personally inquire into the management of such warehouse business. *Id.* sec. 45.

#### **Books and records inspected by commissioners :**

The property, books, records, accounts, papers and proceedings of all such warehousemen as are contemplated by this act, shall at all times during business hours be subject to the examination and inspection of the commissioners, or any one of them, and they or any one of them shall have power to examine under oath any owner, manager, lessee, agent or employee of a public warehouse, and any other person, concerning the condition and management of such warehouse. *Id.* sec. 46.

#### **Witnesses :**

In making any examination as contemplated by this act or for the purpose of obtaining information as contemplated by this act, said commissioners shall have the power to issue subpœnas for the attendance of witnesses, and may administer oaths. In case any person shall willfully refuse to obey such subpœna, it shall be the duty of the district court of any county upon application of said commissioners, to issue an attachment for such witness, and compel such witness to attend before the commissioners and give his testimony upon such matters as shall be lawfully required by such commissioners; and the said court shall have power to punish for contempt as in other cases of refusal to obey the process and order of such court. *Id.* sec. 47,

**Refusal to obey subpoena—Misdemeanor :**

Any person who shall willfully neglect or refuse to obey the process of subpoena issued by said commissioners, and appear and testify as therein required, shall be guilty of a misdemeanor, and shall be liable to arraignment and trial in any court of competent jurisdiction, and on conviction thereof shall be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment of not more than thirty days, or both such fine and imprisonment, in the discretion of the court before which such conviction shall be had. *Id.* sec. 48.

**Commissioners to direct county attorney :**

It shall be the duty of the county attorney in every county, on the request of said commissioners, to institute and prosecute any and all suits or proceedings which they or either of them shall be directed by said commissioners to institute and prosecute for a violation of this act, or any law of this territory concerning public warehouses as constituted by this act, or the officers, employees, owners, operators or agents of such warehouses. *Id.* sec. 49.

**Prosecutions how brought :**

All prosecutions under this act shall be in the name of the territory of Oklahoma, and all moneys arising therefrom shall be paid into the territorial treasury by the sheriff or other officers collecting the same. *Id.* sec. 50.

**Damages not affected :**

This act shall not be construed so as to waive or affect the right of any person injured by the violation of any law in regard to warehouses from prosecuting for his private damages in any manner allowed by law. *Id.* sec. 51.

**Grain in transit :**

Any person or persons, partnership or corporation may have grain, in carload lots in transit or otherwise, inspected by said inspectors under this act, the same as though in warehouses and subject to the same rules and regulations as herein prescribed. *Id.* sec. 52.

This act shall take effect and be in force from and after its passage and approval.

Approved March 10, 1899. *Id.* sec. 53.

Every person who while lawfully in possession of an article of personal property, renders any service to the owner thereon by labor or skill, employed for the protection, improvement, safe-keeping or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such services. Sec. 3210, St. 1893.

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NOTE. See also article 3, chap. 11, Statutes of Oklahoma, 1893.

## DECISIONS AFFECTING WAREHOUSEMEN.

**B.**

*Ordinary care—Warehousemen not insurers.*

Warehousemen are not insurers of property intrusted with them but are liable only for negligence or the want of ordinary care. There must be some dereliction of duty on the part of a warehouseman in relation to the goods in order to make him liable to the owner for the loss. *Walker v. Eikleberry*, 7 Okla. 599.

## CHAPTER XXXVII.

**OREGON.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Warehousemen, etc., must give receipts :**

It shall be the duty of every person keeping, controlling, managing, or operating, as owner or agent or superintendent of any company or corporation, any warehouse, commission house, forwarding house, mill, wharf, or other place where grain, flour, pork, beef, wool, or other produce or commodity is stored, to deliver to the owner of such grain, flour, pork, beef, wool, produce, or commodity, a warehouse receipt therefor, which receipt shall bear the date of its issuance, and shall state from whom received, the number of sacks, if sacked, the number of bushels or pounds, the condition or quality of the same, and the terms and conditions upon which it is stored. Hill's Annotated Laws of Oregon, 1892, sec. 4201.

**Above section construed—Negotiability :**

The aim of the above statute was to facilitate the transfer of stored goods and its purpose was to protect the holders of warehouse receipts from imposition and fraud. Under this section the indorsement may be in blank, or, to the order of another; warehouse receipts may thus pass from hand to hand. The implications arising from the words "to whose order" do not limit the statute to such receipts as are only negotiable in form, when its clear purpose was to make any receipt issued by a warehouseman or wharfinger for the storage of grain or other commodity negotiable without regard to form. *State v. Koshland*, 25 Ore. 178.

**Fraudulent receipt prohibited :**

No person shall issue any receipt or other voucher as provided for in section 4201 for any grain, flour, wool, pork, beef, or other

produce or commodity not actually in store at the time of issuing such receipt, or issue any receipt in any respect fraudulent in its character, either as to its date or the quantity, quality, or grade of such property, or duplicate or issue a second receipt for the same while any former receipt is outstanding for the same property or any part thereof, without writing across the face thereof the word "duplicate." Hill's Annotated Laws of Oregon, 1892, sec. 4202.

**Must not mix commodities of different grades :**

No person operating any warehouse, commission house, forwarding house, mill, wharf, or other place where grain, flour, pork, beef, wool, or other produce or commodity is stored shall mix any grain, flour, pork, beef, wool, or other produce or commodity of different grades together (or different quality of the same grade), or deliver one grade for another, or in any way tamper with the same while in his possession or custody, with a view of securing any profit to himself or any other person and in no case mix different grades together while in store. *Id.* sec. 4203.

**Nothing to be shipped or removed without owner's consent :**

No person operating any warehouse, commission house, forwarding house, mill, wharf, or other place of storage shall sell, encumber, ship, transfer, or in any manner remove or permit to be shipped, transferred, or removed beyond his custody and control, any flour, grain, beef, pork, wool, or other produce or commodity for which a receipt has been given by him as aforesaid, whether received for storing, shipping, grinding, or manufacturing, or other purposes, without the written assent of the holder of the receipt. *Id.* sec. 4204.

**Warehouse receipts and checks declared negotiable :**

All checks or receipts given by any person operating any warehouse, commission house, forwarding house, mill, wharf, or other place of storage for any grain, flour, pork, beef, wool, or other produce or commodity stored or deposited, and all bills of lading and transportation receipts of every kind, are hereby de-

clared negotiable, and may be transferred by indorsement of the party to whose order such check or receipt was given or issued, and such indorsement shall be deemed a valid transfer of the commodity represented by such receipt, and may be made either in blank or to the order of another. *Id.* sec. 4205.

#### **Must deliver goods to owner when charges paid :**

On the presentation of the receipt given by any person operating any warehouse, mill, wharf, commission house, forwarding house, or any other place of storage for any grain, flour, beef, wool, pork, or other produce or commodity, and on payment of all the charges due thereon, the owner shall be entitled to the immediate possession of the commodity named in such receipt, and it shall be the duty of such warehouseman, wharfinger, millman, or other builder (bailee) to deliver such commodity to the owner of such receipt. *Id.* sec. 4206.

#### **Penalty for violation of provisions of this chapter :**

Any person who shall violate any of the provisions of this act shall be liable to an indictment, and upon conviction shall be fined in any sum not exceeding five thousand dollars, or imprisonment in the penitentiary of this state not exceeding five years, or both; and in case of a corporation, the person acting for said corporation shall be liable for a like punishment upon indictment and conviction. And all and every person or persons aggrieved by a violation of this act may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation, before any court of competent jurisdiction, whether such person shall have been convicted under this act or not. *Id.* sec. 4207.

#### **Liens of carriers, storers of merchandise, and agisters of cattle :**

Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another, and any person who shall safely keep or store any

grain, wares, merchandise, and personal property at the request of the owner or lawful possessor thereof, and any person who shall pasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care, or attention upon the same at the request of the owner or lawful possessor thereof, shall have a lien upon such property for his just and reasonable charges for the labor, care, and attention he has bestowed, and the food he has furnished, and he may retain possession of such property until such charges be paid. *Id.* sec. 3684.

**Proceeding to enforce such liens, proviso—Further proviso :**

If such just and reasonable charges be not paid within three months after the care, attention, and labor shall have been performed or bestowed, or the materials for food shall have been furnished, the person having such lien may proceed to sell at public auction the property mentioned in the last two sections, or a part thereof sufficient to pay such just and reasonable charges. Before selling, he shall give notice of such sale by advertisement for three weeks, in a newspaper published in the county, or by posting up notice of such sale in three of the most public places in the city or precinct for three weeks before the time of such sale, and the proceeds of such sale shall be applied, first, to the discharge of such lien, and the cost of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof; *provided*, that nothing herein contained shall be construed as to authorize any warehouseman to sell more of any wool, wheat, oats, or other grain than sufficient to pay charges due said warehouseman on such wool, wheat, oats, or other grain; and *provided further*, that if any such warehouseman shall sell, loan, or dispose of in any manner, without the consent of the owner thereof, of any such wool, wheat, oats, or other grain, he shall, for each and every offense, forfeit and pay to the owner of such wool, wheat, oats, or other grain a sum equal to the market value thereof, and fifty per cent of said market value in addition as a penalty, the market value to be the price such article or articles bear at the time the owner thereof determines to sell the same, such value and penalty to be recovered by an action at law. *Id.* sec. 3685.

**These provisions not to interfere with agreements :**

The provisions of the last three sections shall not interfere with any special agreement of the parties. *Id.* sec. 3686.

**Arson by burning other building or boat in night-time :**

If any person shall willfully and maliciously burn in the night-time any church, court house, town house, meeting house, asylum, college, academy, school house, prison, jail or other public building erected or used for public uses, or any steamboat, ship, or other vessel, or any banking house, ware house, express office, store house, manufactory, mill, barn, stable, shop, or office of another, or shall willfully and maliciously set fire to any building or boat owned by himself or another, by the burning whereof any edifice, building, boat, or vessel mentioned in this section shall be burned in the night-time, such person shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than five nor more than fifteen years. *Id.* sec. 1751.

**Larceny by bailee :**

If any bailee, with or without hire, shall embezzle, or wrongfully convert to his own use, or shall secrete, with intent to convert to his own use, or shall fail, neglect, or refuse to deliver, keep, or account for, according to the nature of the trust, any money or property of another delivered or intrusted to his care or control, and which may be the subject of larceny, such bailee, upon conviction thereof, shall be deemed guilty of larceny, and punished accordingly; and if any such bailee shall receive grain of any kind from different bailors, and mix the same and store it together in bulk, in such case, in an indictment charging such bailee so mixing and storing grain with committing, with reference to said grain, the crime defined and made penal in this section, it shall not be necessary to charge in said indictment or prove on the trial that the ownership of said grain is more than one of said bailors. And every mortgagor of personal property having possession of property mortgaged shall be

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NOTE. See section 1752 *et seq.*, for penalties for other crimes, which may concern warehouses.

deemed a bailee within the provisions of this section. *Id.* sec. 1771.

**Making false receipt or altering receipt of goods in warehouse :**

If any person shall willfully or knowingly make or alter any receipt or other written evidence of the delivery into any warehouse, commission house, forwarding house, mill, store or other building occupied by him or his employer, of any grain, flour, pork, beef, wool, or other goods, wares, or merchandise, which shall not have been so received or delivered previous to the making and uttering of such receipt or other written evidence thereof, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year. *Id.* sec. 1775.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Commingling of grain.*

Where grain belonging to different depositors is mingled with grain of like kind by a warehouseman, the transaction between such depositors and warehouseman remains a bailment. *McBee v. Ceasar et al.*, 15 Ore. 62.

*Same—Alleged title in another.*

A bailee who alleges the title to be in another does so at his peril, and, by retaining the goods, makes himself a party to the controversy and must stand or fall by the title of his alleged bailor. *Wyatt v. Henderson*, 31 Ore. 48.

*Conversion—Mingling of grain does not constitute.*

The mingling of grain by a warehouseman with that belonging to other depositors does not constitute a conversion thereof. *Sears v. Abrams*, 10 Ore. 499.

*Same—Consent of depositor to shipment by warehouseman.*

If a warehouseman parts with property intrusted to his care without the consent, express or implied, of his depositor, such act amounts to a conversion. *McBee v. Ceasar et al.*, 15 Ore. 62.

*Same—Custom of warehousemen of shipping grain at a certain season in the year, no defense unless authorized by depositor.*

A warehouseman who had received a large quantity of grain belonging to different persons, which grain he had mingled together, delivered it to the defendant for the purpose of liquidating an account between them; it was held that when the warehouseman parted with the grain he was guilty of conversion, further that the plaintiff was not estopped to deny that the shipment by the warehouseman to the defendant was unlawful even if the fact was shown that the plaintiff knew it was the custom of the warehouseman to ship all the grain which he had in store at a certain season of the year. *Id.*

*Same—Delivery pursuant to order of one not the owner.*

Where one who was not the owner of certain goods, which were stored in a warehouse, contracted to sell them to the defendant, and the warehouseman delivered the same pursuant to order of the seller, it was held, in an action of trover brought by the owner, that this act constituted a conversion and that no demand was necessary before suit brought. Further, that the doctrine of *caveat emptor* applied, and that it was the duty of such purchaser to ascertain the rights of his vendor. *Velsian v. Lewis*, 15 Ore. 539.

*Same—Warehouseman estopped to change position after suit brought.*

In a suit against a warehouseman for the recovery of certain goods deposited with him or the value thereof, the defendant in his plea set forth that the plaintiff was not the owner of the goods. During the trial of the case the defendant offered proof to show that the reason of his refusal to deliver the goods was that there had been no payment or tender of storage charges. It was held that he was estopped to so change his position. *Wyatt v. Henderson*, 31 Ore. 48, following *Anderson v. Portland Flouring Mills Co.*, 37 Ore. 483.

## I.

*Commingling of grain—Loss to be borne in proportion to the amounts deposited.*

Where a deficiency in the common mass of grain occurs without any fault of the depositors, the loss must fall upon all in the proportion which the amount of grain each had deposited bore to the whole amount deposited. The depositors of grain which is thus mingled become tenants in common thereof and the several owners are compelled to sustain any loss *pro rata* which might occur by diminution, decay or otherwise. In order to make a depositor share in any such loss it is necessary that his grain be stored there at the time the loss occurs. If the warehouseman should deliver to any depositor a greater quantity than he would be entitled to from such residue, although less than the proper quantity to which he would have been entitled if there had been no loss or diminution, it would be a

wrongful taking as well as a wrongful possession as against the other depositors. *Brown v. Northcutt*, 14 Ore. 529.

#### N.

*Loss by fire—Caused by negligence—Care of sulphuric acid.*

The defendant, a common carrier, was liable for plaintiff's goods as warehouseman, the transit having terminated and it having stored the goods in its depot. The evidence showed that an employee of the defendant placed a carboy of sulphuric acid within the depot and that the place in which the acid was stored was near to that part of the depot which had been used by employees of the defendant when filling lamps, there being oil on the floor in consequence; further that the station agent did not know that the acid had been placed there and that it was the custom to place acids of an explosive or dangerous nature outside of the depot. The acid was unloaded and as a result of a leak, the acid coming in contact with oil, an explosion and fire followed. On the above stated facts it was held that the defendant was guilty of negligence in the care and custody of plaintiff's goods and was liable therefor to him for their value. *Farmers' Loan & Trust Co. v. Oregon Ry. & Nav. Co.*, 73 Fed. Rep. 1003.

#### Q.

*Warehouse receipts—Not negotiable unless declared so by statute.*

In the absence of a statute declaring warehouse receipts to be negotiable they are not negotiable instruments in the commercial sense, so as to bind the maker to the assignee in all cases. The holder of such a receipt takes no better title, nor occupies any more advantageous position than if the goods themselves were held by him. *Solomon v. Bushnell*, 11 Ore. 277.

*Same—Requisites of negotiability prior to warehouse act.*

Prior to the passage of the warehouse act the transfer of a warehouse receipt which in terms stated that the property represented thereby would be delivered to the depositor upon the return of the receipt would not pass title to the property represented thereby. *Gill v. Frank & Koshland*, 12 Ore. 507, distinguishing, *Solomon v. Bushnell*, 11 Ore. 277.

*Same—Negotiability—Not a negotiable instrument within the meaning of the mercantile law.*

Section 4205 of Hill's Ann. Laws declares warehouse receipts to be negotiable and by the statute such receipts, regardless of their form, are made negotiable in the sense that a transfer thereof by indorsement carries the absolute title to the commodity represented by the receipt, and a *bona fide* purchaser for value is not chargeable with knowledge of any notice of any equities between the original parties, as in case of the assignment of an ordinary chose in action; but the statute does not give to such receipts all the attributes of negotiable paper. A transfer of the receipt by indorsement may operate, under the statute, to transfer and vest the title of the goods in the purchaser, where before it would not, but the nature of the contract itself is unchanged. It is in no sense a negotiable instrument under the merchant law. It is simply a written acknowledgment by the warehouseman that he has received, and holds in store for the depositor, the amount and description of property named in the receipt, upon the terms and conditions therein stated, and is nothing more than a written contract between the parties, which by the statute is made negotiable for certain purposes. The word "negotiable" is evidently not used in the statute in the sense in which it is ordinarily applied to bills of exchange and promissory notes. *Anderson v. Portland Flouring Mills Co.*, 37 Ore. 483; *State v. Koshland*, 25 Ore. 178; *Shaw v. R. R. Co.*, 101 U. S. 557.

*Same—Parol evidence admissible to show that person issuing such receipt acted in the capacity of agent.*

Warehouse receipts are not negotiable instruments within the meaning of the rule prohibiting the admission of parol testimony to charge one not bound upon the face of the instrument, but in that respect they are simple contracts and such evidence is admissible to show that, although executed by and in the name of an agent, they are in effect the contract of the principal, and that he is bound thereby. *Anderson v. Portland Flouring Mills Co.*, 37 Ore. 483; *Barbre v. Goodale*, 28 Ore. 464.

**R.***Bill of lading—Not a contract.*

As between the parties thereto a bill of lading is not a contract in writing such as will protect the same against the introduction of parol testimony to contradict or vary its terms but it is to be regarded only as an admission on the part of the consignor as to his purpose at the time of making the shipment, and such admission is subject to be rebutted. *McBee v. Ceasar et al.*, 15 Ore. 62.

**T.***Indictment of a warehouseman—Requisites.*

An indictment charged the defendant, a warehouseman, under secs. 4201 and 4207 of Hill's Ann. Code with wrongfully issuing a receipt for a greater number of sheep-skins than was actually received. The indictment charged the defendant with operating as owner, a warehouse, and with being a warehouseman, and further alleged that he issued receipts for sheep-skins not actually in store at the time; it was not set forth, however, that the defendant operated a warehouse for the storage of sheep-skins and other commodities. It was held on demurrer that this indictment was defective. *State v. Koshland*, 25 Ore. 178; *State v. Stockman*, 30 Ore. 36.

**U.***Constitutionality of statute imposing penalty upon warehousemen—Failure to specifically mention penalty in the title of act—Indictment.*

A warehouseman was indicted for violation of the warehouse act of this state for issuing receipts for a greater amount of property than he had actually in the store. The statute under which he was indicted is entitled "Act to regulate warehousemen, wharfingers, commission men, and other bailees, and to declare the effect of warehouse receipts." The contention was made in behalf of the defendant that the part of such act which attempted to impose a penalty upon warehousemen was void under sec. 20, art. 4, of the state constitution which provides in effect that all matters contained in the statute shall be em-

braced in the title thereof. It was *held* that this contention could not be sustained; that this provision of the constitution should receive a liberal interpretation in order to promote, and not defeat, the beneficial purposes for which it was adopted. *State v. Koshland*, 25 Ore. 178.

## CHAPTER XXXVIII.

**PENNSYLVANIA.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Warehouse receipts and bills of lading to be negotiable—Transferee to be deemed the owner of the goods—Lien of holder—When property to be delivered :**

Warehouse receipts given for any goods, wares, merchandise, grain, flour, produce, petroleum, or other commodities, stored or deposited with any warehouseman, wharfinger, or other person in this state, or bills of lading, or receipts for the same, when in transit by cars or vessels to any such warehouseman, wharfinger or other person, shall be negotiable, and may be transferred by indorsement and delivery of said receipt or bill of lading; and any person to whom the said receipt or bill of lading may be so transferred, shall be deemed and taken to be the owner of the goods, wares and merchandise therein specified, so as to give security and validity to any lien created on the same, subject to the payment of freight and charges thereon; and no property on which such lien may have been created, shall be delivered by said warehouseman, wharfinger or other person, except on the surrender and the cancellation of said original receipt or bill of lading; or, in case of partial sale or release of the said merchandise, by the written assent of the holder of said receipt or bill of lading, indorsed thereon: *Provided*, That all warehouse receipts or bills of lading, which shall have the words "not negotiable," plainly written or stamped on the face thereof, shall be exempt from the provisions of this act. 1866, Sept. 24; P. L. (1867) 1363, sec. 1.

**No receipt to be given except for goods actually received :**

No warehouseman, wharfinger or other person, shall issue any receipt or voucher, for any goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity, to any person or

persons, purporting to be the owner or owners thereof, unless such goods, wares, merchandise, petroleum, grain, flour or other produce or commodity, shall have been actually received into store, or upon the premises of such warehouseman, wharfinger or other person, and shall be in store, or on the premises as aforesaid, and under his control, at the time of issuing such receipt. *Id.* sec. 2.

**Duplicate receipts to be so indorsed :**

No warehouseman, wharfinger or other person, shall issue any second or duplicate receipt for any goods, wares, merchandise, petroleum, grain, flour or other produce or commodity, while any former receipt for any such goods, wares, merchandise, petroleum, grain, flour or other produce or commodity as aforesaid, or any part thereof, shall be outstanding and uncalled, without writing across the face of the same, "duplicate." *Id.* sec. 3.

**Warehouseman, etc., not to sell, etc., without return of receipt :**

No warehouseman, wharfinger or other person, shall sell, or incumber, ship, transfer, or in any manner remove, beyond his immediate control, any goods, wares, merchandise, petroleum, grain, flour or other produce or commodity, for which a receipt shall have been given by him as aforesaid, whether received for storage, shipping, grinding, manufacturing or other purposes, without the return of such receipt. *Id.* sec. 4.

**Above act construed—Who a warehouseman within its meaning—Rule of strict construction :**

The object of the above act is to protect the transferees and pledgees of what is technically known as warehouse receipts. The person who issues such a receipt must be a warehouseman, or one who is engaged in a like business, and the expression "other business" means those engaged in a similar business, or who may connect the business of warehousemen or wharfingers with some other pursuit such as shipping, grinding, or other manufacturing. The statute being penal is to be strictly construed, and should not be extended beyond the evident intent of the legislature as expressed upon its face. The receipt

issued by a warehouseman pursuant to this act need not be in any particular form to be negotiable; for if it is issued by one who is embraced within the class of persons mentioned in the statute, it will, regardless of form be negotiable unless there be a notice on its face that it is not negotiable. *Bucher v. Commonwealth*, 103 Pa. St. 528; *Moors v. Jagode*, 195 Pa. St. 163; *People's Bank v. Gayley*, 9 W. N. Cas. 49.

**Same—Holding oneself out as a warehouseman—Effect :**

Where a distiller had issued receipts upon which it was stated that they were warehouse receipts, the court charged the jury that where a man or firm hold themselves out as warehousemen, assert that they are warehousemen, holding goods on storage for a charge and issuing receipts upon which it is stated that they are warehousemen, that the public has a right to deal with them as such and the effect of the issuance of such receipts constitutes an agreement that they are to be governed by the statutes of Pennsylvania in relation thereto. Judgment was given for the plaintiff which was affirmed on appeal. *Rosenbaum v. Batjer*, 154 Pa. St. 544.

**Penalty for violation of preceding provisions :**

Any warehouseman, wharfinger or other person, who shall violate any of the foregoing provisions of this act, shall be deemed guilty of fraud; and upon indictment and conviction shall be fined in any sum not exceeding one thousand dollars, or imprisoned in one of the state prisons of this state, not exceeding five years, or both; and all and every person or persons aggrieved by the violation of any of the provisions of this act may have and maintain an action at law against the person or persons violating any of the foregoing provisions of this act, to recover all damages which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted of fraud as aforesaid, under this act, or not. 1866, Sept. 24; P. L. (1867) 1363, sec. 5.

**This act to extend to grain stored in elevators and to petroleum in barrels :**

The provisions of the foregoing act shall apply to grain stored

in grain elevators, and to petroleum in barrels, stored or kept in places designated by law; and the owners or lessees of any of said elevators or places designated as aforesaid, shall have the rights and powers, and be subject to the obligations and penalties as therein provided, in regard to warehousemen, wharfingers or other persons. *Id.* sec. 7.

**Attachments of goods in the hands of bailees regulated—Holder of receipt to be deemed garnishee—Dissolution of attachment :**

Whenever any goods, wares or merchandise, shall have been, or shall hereafter be attached, by writ of foreign or other attachment, in the hands, possession or custody of any warehouseman, wharfinger or other person, who shall have issued for the same, any warehouse receipt or voucher, or any bill of lading or other receipt, when in transit by car or vessel, which warehouse receipt, voucher, bill of lading or other receipt, shall have been negotiated and transferred by indorsement or delivery, as provided in the act to which this is a supplement, the holder of any such warehouse receipt, voucher, bill of lading or other receipt, to whom the same shall have been transferred or delivered as aforesaid, although not named or summoned in, or served with such writ of attachment, shall nevertheless be deemed and taken to all intents to be a garnishee of the said goods, wares or merchandise attached in the said writ, as if the same were in his hands or possession; and the name of the holder of such warehouse receipt, voucher, bill of lading or other receipt shall upon application to the court wherefrom such writ was issued, be added to the record of the action as a garnishee of the said goods, wares or merchandise; and thereupon the said court shall, upon the motion of the said garnishee, grant a rule upon the plaintiff in such attachment, to appear before the court at the time and place in such rule named, and there show cause why the attachment of such goods, wares or merchandise should not be dissolved, or the proceeds thereof, if the same shall have been sold by the order of said court, paid to the holder of such warehouse receipt, voucher, bill of lading or other receipt, upon his giving security as such garnishee, by recognizance and sufficient sureties to be approved by the

court, or by one of the judges thereof in vacation, with condition that so much of the said goods, wares or merchandise, or of the proceeds thereof, after the sale of the whole or any part thereof, shall remain after the settlement or payment thereout, of the amount of any lien upon the said goods, wares or merchandise created by the advance of money or credit by the said holder of such warehouse receipt, voucher, bill of lading or other receipt, transferred or delivered as aforesaid, and also of all prior liens for storage, freight and other charges, shall be retained in the hands of said garnishee, to answer, if the plaintiff shall have execution of any judgment of the effects of the defendant in the action attached as aforesaid or to abide the further action of the said court. 1874, June 13, P. L. 285, sec. 1.

**Bailees not to be liable, when the property is taken from them by legal process :**

Where goods, wares or merchandise shall be taken from the possession of any warehouseman, wharfinger, carrier or other bailee, by writ of attachment, replevin or other legal process, such warehouseman, wharfinger, carrier or other bailee shall not be liable therefor to the owner of such goods, wares or merchandise, or to the holder of any receipt, voucher or bill of lading given for the same; saving and reserving, however, to such owner or holder, all legal remedies for the recovery of the said goods, wares or merchandise from any person unlawfully detaining the same, or for the recovery of damages against any person unlawfully taking the same. *Id.* sec. 2.

**Actions for property delivered by mistake :**

Any carrier or other bailee of property, who has parted with its possession by mistake, to any person not entitled to the possession, may, after demand, maintain an action of replevin for the same, or if the property cannot be found, an action of assumpsit, or trover and conversion, against the party converting or removing it. In the case of replevin, if there was no fraud in obtaining such possession, the plaintiff shall first tender to the defendant the freight or other proper charges which have accrued, at the time of the demand of possession. 1881, June 8, P. L. 86, sec. 1.

**Where receipt has been lost or destroyed, owner may present petition to court of common pleas, praying for an order on the company to deliver up the goods—Citation :**

Where any receipt given or issued by any warehouseman, warehousing company, storage or deposit company, or wharfinger, has become lost, mislaid or destroyed, it shall be lawful for the person claiming to be the owner of such receipt to present to the court of common pleas of the county wherein said warehouseman, warehousing company, storage or deposit company, or wharfinger, issuing such receipt shall have his, their or its principal office, or place of business, a petition verified by the oath or affirmation of the petitioner, setting forth all the material facts, including the date of the receipt as accurately as the same can be ascertained, a description of the goods, wares, merchandise, petroleum, grain, flour or other produce, commodity or property for which the receipt was given, and a statement of the value thereof, the name of the person or party to whom the receipt was given, the manner in which the petitioner obtained title to such receipt, the date at which he acquired title and whether such title be absolute or in trust, or otherwise qualified, the date of the loss, mislaying or destruction as far as the same can be furnished, and a statement that the petitioner is unable by reason thereof to return such receipt, or to produce the same, and praying for an order on such warehouseman, warehousing company, storage or deposit company, or wharfinger who issued the same, to deliver up to the petitioner the goods, wares, merchandise, petroleum, grain, flour or other produce, commodity or property for which such receipt was issued and given, without the petitioner being required to produce or return such receipt; whereupon the court shall cause a citation to issue directed to the warehouseman, warehousing company, storage or deposit company, or wharfinger issuing such receipt, and to such other person or persons, if any, as to the court may seem to have an interest in the matter, requiring them to appear on a day certain to be fixed by the court, and show cause why the prayer of said petitioner should not be granted and why the order and decree prayed for should not be entered. 1893, May 25, P. L. 133, sec. 1.

**Court may grant prayer—The petitioner to execute a bond and file same—Company to deliver up the goods after bond is filed and decree entered—Decree not to impair any lien of company against such goods :**

On the return of such citation the court may, in its discretion, after due consideration, grant the prayer of such petition and may order and direct the warehouseman, warehousing company, storage or deposit company, or wharfinger, who issued such receipt, to deliver up to the petitioner the goods, wares, merchandise, petroleum, grain, flour or other produce, commodity or property for which such receipt was given without requiring the production or return of such receipt: *Provided, however,* That the petitioner shall first execute and file in the office of the prothonotary or clerk of said court a bond with one or more sureties to be approved by the court, which bond shall be taken in the name of the commonwealth of Pennsylvania for the use and benefit of all parties in interest, and shall be taken in such sum as shall be fixed by the court, after due consideration, as to the value of the goods and property so ordered to be delivered as well as to the other circumstances of the case. And upon the filing of such bond and on the entering of such order and decree by the court said warehouseman, warehousing company, storage or deposit company, or wharfinger, who issued such receipt, shall deliver up to the petitioner the goods, wares, merchandise, petroleum, grain, flour or other commodity or produce or property for which such receipt was given, without requiring the production or return of such receipt, and shall be fully released and discharged of and from all liability and responsibility whatsoever to any and all person or parties whatsoever by reason of so doing, and should any person or party be injured by such order or decree, his or their recourse shall be solely upon such bond or against the wrongdoer whose action procured such order or decree. *And further provided,* That no such decree or order shall in anywise impair or affect any right, lien or claim that such warehouseman, warehousing company, storage or deposit company, or wharfinger, may or shall have upon or against such goods, wares, merchandise, petroleum, grain, flour or other produce, commodity or property for ad-

vances, loans, payments, storage, work or service whatsoever.  
*Id.* sec. 2.

**Conditions of bond—Any person injured may institute action :**

The bond herein provided for shall be conditioned that the petitioner shall indemnify all parties interested against any and all loss, or damage, which may accrue to him, her or them, by reason of any order or decree granted or entered on the prayer of such petition as aforesaid, or by reason of any delivery made upon or under the same, and whatever injury shall be sustained by any person or party under or by reason of such order, decree or delivery, actions of debt or of *scire facias* may be instituted on said bond, as often as the circumstances may require, against the petitioner, his surety or sureties, and their respective heirs, executors or administrators, and in each case a judgment shall be entered and execution shall be issued only for such damage as the party plaintiff may have sustained together with the costs of suit. *Id.* sec. 3.

**Costs and counsel fees to respondents shall be paid by petitioner :**

The costs of such proceeding, together with a reasonable allowance to be fixed by the court for counsel fee to the respondents, shall in every case arising hereunder be fully paid by the petitioner before the respondents shall be required to comply with the order or decree made upon such petition. *Id.* sec. 4.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Bailee not required to open packages.*

No bailee is bound, on giving a receipt for goods, to open the packages to see if they correspond with the name given to them. If he acts in good faith, he is not answerable to another who advanced money on the goods on the faith of the transaction; for the reliance was not properly on him, but upon the honesty of the man who procured the receipt. *Grier v. Nickle*, 1 Amer. L. Reg. 119.

*Same—No implication of sale.*

If a man places his property in the hands of another, such person being engaged in the business of receiving property of a like kind for storage, there is no implication that such bailee is the owner thereof. *Mann v. English*, 7 Pa. C. C. Rep. 637.

*Same—Burden of proof.*

The law will not intend negligence on the part of a bailee, who will be presumed to have acted according to his trust until the contrary is shown. But to throw the burden of proof on the bailor, it is necessary that the bailee should show how the goods were lost. *Clark & Co. v. Spencer*, 10 Watts, 335.

## B.

*Ordinary care—Liable for negligence.*

A bailee for hire is bound to exercise ordinary care and diligence and he will be liable only where the loss or damage results from a failure to exercise such degree of care. *Tower et al. v. Grocers' Supply & Storage Co.*, 159 Pa. St. 106; *McCarty v. N. Y. & E. R. R. Co.*, 30 Pa. St. 247.

*Delivery—To a warehouseman—Facts which do not constitute a valid delivery.*

In an action charging a railroad company with liability for the loss of goods which were alleged to have been delivered to it, the evidence showed as follows: That about seven o'clock

in the evening, just about dark, when the defendant's warehouse was closed and locked for the night, that the drayman of the plaintiff opened the upper door and put the goods in, there being no one on the grounds in charge of the warehouse and no one there representing the company to receive the goods. There was further evidence which showed that the drayman had, shortly after he deposited the goods as above stated, called out to the bill clerk of the railroad that he had left some goods of the plaintiff's and that he wanted the clerk to bill and ship them the next morning. This was not addressed to the shipping clerk nor to the freight agent. Furthermore, the drayman knew that the bill clerk was not, in fact, that day on duty. *Held* this was not a delivery to an authorized agent of the defendant and therefore the defendants were not liable. *Spoofford v. Railroad Co.*, 11 Super. Ct. 97; *Leidy v. Quaker City, etc., Warehouse Co.*, 180 Pa. St. 323.

*Conversion—When demand and refusal unnecessary.*

Ordinarily a sufficient demand and a refusal are both essential to constitute conversion. The demand is nothing without the refusal, but where there was not only a denial of the title in the owner but an assertion of title in, and delivery of the goods, to another after notice of the dispute between them, it was held that this clearly constituted a conversion of the property. *Clowes v. Hughes Bros.*, 3 Super. Ct. 561; *Taylor v. Hanlon*, 103 Pa. St. 504; *Hinckley v. Baxter*, 13 Allen, 139.

**H.**

*Lien—Specific and not general in its nature.*

A warehouseman has a specific, not a general lien on the goods stored with him, but he may deliver a part and retain the residue for his charges on all the goods received by him under the same bailment, provided the ownership of the whole is in the same bailor. *Steinman v. Wilkins*, 7 Watts & Sargeant, 466. (See note given with this case in 42 Amer. Dec. 257.)

**K.**

*Attachment—Warehouseman may be made garnishee—Entitled to protection by bond if negotiable receipts have been issued.*

If a warehouseman has issued negotiable warehouse receipts

for goods deposited with him and he is made garnishee in a suit against his depositor, he is entitled to a bond from the plaintiff indemnifying him against any loss which he might suffer owing to negotiation of the receipts into the hands of *bona fide* holders. *Rondebush v. Hollis et al., defendants, and The Meadville Distilling Co., garnishee*, 21 Pa. C. C. Rep. 324.

## M.

### *Pledge—Without knowledge of bailee—Replevin.*

If the bailor of goods deposited with a warehouseman pledge them by a delivery of a receipt (not a "warehouse receipt") issued by an employee of the warehouseman without authority, and the warehouseman having no notice of such pledge, nor of such receipt, delivers the goods to another, a purchaser of a valid receipt subsequently issued by the warehouseman himself, such bailor cannot maintain replevin against the warehouseman for the goods. *People's Bank v. Gayley*, 92 Pa. St. 518.

### *Same—Same—Requisites of such a notice.*

A bailee issued a receipt, which was not a negotiable warehouse receipt within the meaning of the statutes of this state, to one who had deposited property with him. At the time of the issuance thereof the attorney of the pledgor stated to the warehouseman's foreman that the receipt was to be used for the purpose of borrowing money thereon and in his presence indorsed the receipt as follows:

"Please deliver inclosed pig-iron to W. H. Taber, Esqre., cashier, or order.

"HENRY G. MORRIS.

"Per ALEXANDER IRWIN, Att'y."

In an action brought by the bank with which the receipt had been pledged, against the defendant warehouseman, it was held that the judgment given for the defendant was correct, for the above transaction did not constitute such notice to the defendants as would make them liable; that it was the duty of the plaintiff bank either to have insisted on regular warehouse receipts, or to have immediately notified the defendant that it held the receipts, which he had issued for this iron, as secu-

rity for a loan, but as it did neither of these things, and that the loss was the resulting consequence. *People's Bank v. Etting & Groome*, 108 Pa. St. 258.

*Injury by water—Evidence—Instruction to jury.*

The plaintiff, the owner of certain household goods, sued the defendant, a warehouseman, alleging that the same had been injured by dampness during the time when they were stored. The defendant contended that the goods were so damaged before he received them and offered evidence to show that his warehouse was impervious to rain. The defendant then requested the court to instruct the jury to find for him; this was refused, the question of negligence being left to the jury, a verdict was found for the plaintiff. The defendant took a writ of error upon which the judgment of the lower court was affirmed. *Doyle v. Mays*, 7 Atl. Rep. 747.

N.

*Loss by fire—Negligence must be shown.*

In an action against a warehouseman for the loss of goods by fire, the burden of proof is upon the plaintiff to show that the fire occurred as a result of the negligence or want of ordinary care on the part of defendant. *Tower et al. v. Grocer's Supply & Storage Co.*, 159 Pa. St. 106.

*Same—Same—Instructions to jury.*

The plaintiff who had stored goods with the defendant warehouseman alleged that at the time of the storage she had instructed the assistant in the office of the defendant to have the goods insured. Plaintiff testified that immediately after the fire, she called upon the defendant and stated that she had left orders for such insurance to be placed on her goods. It was contended by the warehouseman that as the proofs failed to show essential elements of parol contract to insure, no agreement was proved. It was held that as the defendant was engaged in the storage business and had made it a part of such business to affect insurance when requested to do so by its customers that a contract made for that object being in the direct line of its business would not be one of insurance re-

quiring certain necessary elements to constitute it, but would be an undertaking in connection with the bailment. A refusal to instruct the jury that the burden was upon the plaintiff to prove that at the time of the alleged agreement of insurance was entered into that the amount, rate, terms, premium, and risk to be insured against were all to have been arrived at, therefore *held* not to be error. *Id.*

*Same—Pleading—Insufficiency of declaration.*

The plaintiff sued the defendant, a warehouseman, for goods which he alleged were destroyed by fire while stored in the latter's warehouse. The declaration failed to state that there was any contract between the parties by which the defendant was to keep the goods insured, also that the loss resulted from gross negligence on the part of the defendant and that the defendant was a bailee for hire. The demurrer to such a declaration was sustained with leave to amend. *Heaton v. Knowles*, 14 W. N. Cas. 74.

*Cold storage—Damage to goods—Burden of proof.*

In an action against a warehouseman for the recovery of the value of eggs alleged to have been injured while in cold storage, the court instructed the jury that the plaintiff must establish that during the time the eggs were stored they were injured by the act of the defendant, and by his act alone, because if they were injured by any other act such as inherent decay, etc., the defendant was not responsible; further that the plaintiff should show by evidence that the eggs were in a good and satisfactory condition to be stored at the time the defendant received them and that the removal of the eggs from another warehouse to that of the defendant did not injure the eggs. The above charge *held* correct on appeal. *Boswell v. Collins*, 8 Atl. Rep. 845.

*Same—What degree of negligence must be shown—Question for the jury.*

The defendant warehousemen were sued for the value of certain poultry which the plaintiff alleged had been spoiled

while stored in their cold storage warehouse. The court instructed the jury that the whole case turned upon the question as to who had caused the injury to the poultry. That if they found that the defendants had exercised due care in its preservation, or that the poultry was not in good condition when brought to the warehouse of the defendant that their verdict should be for the defendant. Further, that negligence on the part of the defendant could not be assumed from the mere fact that the goods of the plaintiff were injured, but that negligent acts or omissions must be conclusively proved. The court also charged that if the injury to the poultry resulted from any other cause than the negligence of the defendant, no matter what that cause might be, the defendants were not responsible. Finally that the jury could consider the fact that the plaintiff's goods were of a very perishable nature as relieving or tending to relieve the defendants from the charge that the poultry was spoiled through their negligence. Verdict was given for the plaintiff, and on appeal it was *held* that the above charge was correct, as the jury had had the question to determine as to whether the loss and injury suffered by the plaintiff was occasioned exclusively by the acts or omissions of the defendants. *Leidy v. Quaker City C. S. & W. Co.*, 180 Pa. St. 323.

#### *Evidence—Negligence—Burden of proof on plaintiff.*

In an action against one liable as a warehouseman for the loss of goods destroyed by fire, the burden is upon the plaintiff to show that the fire was the result of the defendant's negligence. *Nat. Line Steamship Co. v. Smart*, 107 Pa. St. 492.

#### *Same—Must account for failure to deliver.*

In an action against a warehouseman where it is shown that he failed to deliver goods intrusted to him on demand, it was *held* that he must show that the goods were delivered to somebody by the authority of the plaintiff. Simply being unable to account for the fact that the goods were not present when the defendant desired to redeliver them is no excuse. *Hoerreller et al. v. Myers et al.*, 158 Pa. St. 461.

## Q.

*Warehouse receipts—Must be issued by a warehouseman—He must have possession of the property.*

A person in charge of a warehouseman's wharf, or a warehouseman's clerk, cannot issue a valid warehouse receipt. In such a case the person attempting to issue the receipt is in charge of the goods, it is true, but he has not possession as required by the act of September 24, 1866; he holds for another,—his employer. *People's Bank v. Gayley*, 92 Pa. St. 518.

*Same—Must be issued by a warehouseman—Goods must not belong to him.*

The statutes of this state regarding the issuance of warehouse receipts are in derogation of the common law and establish an exception to the general course of business which is conducted on the presumption that the title of personal property accompanies possession. To bring a case, therefore, within the statute, all of the requisites thereof must be shown to exist. In order that a warehouse receipt shall be valid it must be issued by a warehouseman and not against his own goods and the warehouseman must be regularly engaged in the business of warehousing. *Trademen's Nat. Bank, etc., v. Kent Mfg. Co., Jagode et al.*, 186 Pa. 556; *Moors v. Jagode*, 195 Pa. St. 163; *People's Bank v. Troutman*, 9 W. N. Cas. 54.

*Same—Revenue tax on—Postal card.*

A warehouseman was in the custom of notifying consignees by a postal card of the arrival of their goods. The card stated that the goods had been received and were subject to the order of the consignee; further, that if not removed in ten days they would be stored, *held* that such a card is not taxable under the War Revenue Act which imposed a tax on warehouse receipts. That the Revenue Act imposed a tax upon the receipt, not upon the transaction and that this was not a warehouse receipt. *Merchant's Warehouse Co. v. McClain*, 112 Fed. Rep. 787.

*Same—Negotiability—Bank holding as collateral a bona fide holder.*

A warehouse receipt which states "this certificate is trans-

ferable by delivery" is negotiable and its transfer and delivery operates in law as a delivery of the property itself. If a bank accepts such a receipt in good faith as security for money loaned, it is not only a holder for value but also a *bona fide* holder of the receipt. *Exchange Bank v. Uhlman-Goldsborough Co.*, 5 Pa. Dist. Rep. 480; *Miller v. Browursky*, 130 Pa. St. Rep. 372.

*Same—Negotiability—Assignee for benefit of creditors not a bona fide holder.*

A voluntary assignee for benefit of creditors is not a *bona fide* purchaser for value of warehouse receipts in the hands of his assignor. He is merely the representative of his assignor and he enjoys only such rights as the assignor had. Therefore where one who had deposited goods in a warehouse and pledged some of the receipts therefor with a bank as security for a loan, such depositor afterward making an assignment for the benefit of his creditors, it was held that his assignee was estopped to deny the title of the bank to the goods represented by the receipts which it held, it appearing from the evidence that the depositor had withdrawn some of the goods deposited and substituted others in the place thereof. *Brooks, Miller & Co. v. Western National Bank*, 16 W. N. Cas. 298.

*Same—Same—Delivery of goods in settlement of an antecedent debt not a sale as will defeat pledgee.*

Certain goods were consigned to the plaintiff bank which held the bills of lading and other evidences of title. As a matter of fact, the bank was not the owner of the goods but held them simply as pledgee and the goods were delivered to the consignee. The bank delivered these evidences of title and took in return a storage receipt, which however allowed the consignee to sell the goods but to account for the proceeds and pay to the plaintiff the amount due it. Under these receipts the bank retained the ownership of the goods and the consignee acquired no title which would avail it or its creditors. It had, however, authority to sell, and any valid exercise of that power would divest the bank of its title. The defendants were customers of the consignee and had sent to him a check in payment

of a note which had been previously given him. The consignee failed to apply the proceeds of the check to the payment of these notes and the defendants were obliged to pay them at maturity. Subsequently the consignee delivered to the defendants the property upon which the plaintiff bank had loaned money to the consignee. In the action brought by the bank against the defendants for the recovery of the goods, it was *held* that the delivery to the defendants of the goods in question was not a sale in the ordinary course of business, such as would be a valid exercise of the authority to sell contained in the storage receipts. Therefore, judgment which was given for the plaintiff was affirmed on appeal. *Canadian Bank v. Baum & Sons*, 187 Pa. St. 48; *Brown Bros. & Co. v. Billington*, 163 Pa. 76.

*Same—Same—Distiller's certificate—Indorsee estopped.*

The defendants had indorsed distiller's certificates for a quantity of whiskey to the purchaser thereof who subsequently transferred the same to the plaintiff. The defendants afterwards attached the whiskey while in the warehouse in an action against the purchaser. The plaintiff brought an action against the defendants alleging that the defendants were estopped from raising the question as to the title of the plaintiff by the fact that they had indorsed the certificates and that as a result thereof the plaintiff had obtained possession of them. This *held* to be correct and judgment given for the defendant was affirmed. *Rosenham v. Batjer*, 154 Pa. St. 544.

**R.**

*Bills of lading—Effect of statute declaring them negotiable—Not “negotiable instruments.”*

A bill of lading, of which the consignee has obtained possession in a fraudulent manner and which has been negotiated to an innocent purchaser, does not pass the title to such purchaser as against the person who held its possession lawfully and from whom it was stolen. Where, therefore, the consignee fraudulently obtained possession of an original bill of lading which was attached to a draft and presented to him for acceptance by a messenger from the bank, who afterwards sold the original bill of lading, it was *held* that the title to the goods

remained in the bank. The court further *held* that it was not the intention of the legislature when it declared that bills of lading should be negotiable by indorsement *in the same manner as bills of exchange*, that the nature and character of bills of lading was thereby put *in all respects* on the footing of instruments which are the representatives of money, commonly known as "negotiable instruments." *Shaw v. Railroad Co.*, 101 U. S. 557.

## CHAPTER XXXIX.

**RHODE ISLAND.****LAWS PERTAINING TO WAREHOUSEMEN.****Lien of warehousemen—Warehousemen shall have a lien on goods stored with them :**

Every public warehouseman or person lawfully engaged exclusively in the business of storing goods, wares and merchandise for hire shall have a lien for his storage charges, for money advanced by him for freight, cartage, labor, weighing and cooperating paid on goods deposited and stored with him; and such lien shall extend to and include all legal demands for storage and said above described expenses paid, which he may have against the owner of said goods; and it shall be lawful for him to detain said goods until such lien is paid. General Laws, Rhode Island, 1896, ch. 206, sec. 24.

**When goods stored may be sold by warehouseman :**

Every public warehouseman who shall have in his possession any property, by virtue of any agreement or warehouse receipt for the storage of the same, on which a claim for storage is at least one year overdue, may proceed to sell the same at public auction, and out of the proceeds may retain the charges for storage of said goods, wares, and merchandise, and any advancee that may have been made thereon by him or them, and the expense of advertising and sale thereof; but no sale shall be made until after the giving of a printed or written notice of such sale to the person or persons in whose name such goods, wares and merchandise were stored, requiring him, her or them to pay the arrears or amount due for such storage, and, in case of default in so doing, that such goods, wares and merchandise will be sold to pay the same at a time and place to be specified in such notice *Id.* ch. 206, sec. 25.

**Notice of sale, how to be served :**

The notice required by the last preceding section shall be served by delivering it to the person storing the same, or by leaving it at his usual place of abode, or, if a corporation, at the office of such corporation, if within the state, at least thirty days before the time of such sale, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person with an affidavit of the truth of the return. If the party storing the goods cannot with reasonable diligence be found within the state, or, in case of a corporation, if it has no office within the state, then such notice shall be given by publication once in each week for three successive weeks, the last publication to be at least thirty days before the time of such sale, in a newspaper published in the city or town where such warehouse is located, or, if there is no such paper, in one of the principal newspapers published in the county in which said warehouse is located. In the event that the party storing such goods shall have parted with his title to the same, and the purchaser shall have notified the warehouseman with his address, such notice shall be given to such person in lieu of the person storing the goods. *Id.* ch. 206, sec. 26.

**Record to be kept of surplus proceeds of sales :**

Such warehouseman shall make an entry in a book kept for that purpose of the balance or surplus of the proceeds of the sale, if any, and such balance or surplus shall be paid over to such person or persons entitled thereto on demand; and if such balance or surplus is not called for or claimed by said party or owner of said property within six months after such sale, such balance or surplus shall be paid by such warehouseman to the general treasurer, who shall pay the same to the parties entitled thereto, if called for or claimed by the rightful owner within five years after the receipt thereof; and such warehouseman shall, at the same time, file with said general treasurer an affidavit in which shall be stated the name and place of residence, so far as known, of the person whose property has been sold, and the price at which it was sold, the name and residence of the auctioneer making the sale, together with a copy of the notice served or published, and how served. Such notice and

affidavit, when filed as above provided, shall be admitted as evidence of the giving of the notice. *Id.* ch. 206, sec. 27.

Inspection, sale and keeping of inflammable and explosive fluids.

**Penalty for keeping or selling inflammable or explosive fluids not inspected :**

Every person who shall keep or offer for sale in any place or building within the state, petroleum oil or any product thereof, or shall keep or offer for sale any mixture of naphtha or inflammable fluids for illuminating purposes that will flash or inflame at a less temperature or fire test than one hundred and ten degrees Fahrenheit, or that has not been inspected, tested and the cask, barrel or package containing the same marked with the degrees Fahrenheit at which the contents thereof will flash or inflame in manner provided by section two of this chapter, and every person who shall empty any petroleum oil or any product thereof or any mixture of naphtha or inflammable fluids which shall be at any time brought into the state out of the original packages in which it is brought into the state, until the same has been inspected by an inspector of kerosene, shall be fined not less than fifty dollars or be imprisoned not less than six months, and the name of every such person shall be published in some newspaper published in or nearest to the town where such offense was committed. *Id.* ch. 144, sec. 1.

**Duties of the inspector of kerosene—Fees :**

The inspector of kerosene shall inspect and test all petroleum oil, kerosene and coal oil and their compounds and every product or mixture thereof which may be manufactured, offered for sale or stored in the state, and every inspector shall legibly mark upon every cask, barrel or package so tested by him the degrees Fahrenheit at which the contents thereof are inflammable or will flash or explode, by cutting, branding or painting the same thereon, together with his official brand or stamp and the initials of his name. The owner of kerosene or other fluids made liable to inspection by the provisions of this chapter, shall pay to the inspector who shall inspect the same the sum

of one dollar for every hour employed in such inspection. *Id.* ch. 144, sec. 2.

### **Sale for exportation :**

Nothing contained in the preceding two sections shall be so construed as to apply to the sale of petroleum or any of its products for exportation from the state. *Id.* ch. 144, sec. 3.

### **How to be kept for sale or stored—Amount limited :**

Petroleum oil or any of its products or the compounds thereof that are not inflammable or which do not flash at a less temperature or fire test than one hundred and ten degrees Fahrenheit, may be kept on sale or stored in the state in the following manner only and subject to the terms and conditions herein-after named, namely: In quantities not exceeding one hundred and fifty gallons, in any store or warehouse; in quantities exceeding one hundred and fifty gallons and not exceeding ten barrels, in cellars at least four feet below the surface of the street, properly ventilated, and under buildings no part of which is occupied as a dwelling-house; in quantities exceeding ten barrels and not exceeding one hundred barrels, in warehouses constructed of brick, stone or iron especially adapted to that purpose; in quantities exceeding one hundred barrels, in warehouses constructed of brick, stone or iron situated more than fifty feet distant from the nearest building or wharf, or, if within fifty feet from the nearest building or wharf, there shall be a wall of brick or stone between said warehouse and such building or wharf at least ten feet high and sixteen inches thick; and all such warehouses shall be so constructed and arranged that no overflow or escape of the articles therein stored beyond the limits thereof can possibly take place. *Id.* ch. 144, sec. 4.

### **Inspectors to examine the premises where petroleum oil is stored :**

The inspectors of kerosene shall examine from time to time all premises within their respective towns wherein petroleum oil or any product thereof or any mixture of naphtha or inflammable fluid for illuminating purposes is stored or kept, and the owners and occupants of all such premises shall allow

every inspector of kerosene at all times to enter upon and inspect such premises. *Id.* ch. 144, sec. 5.

**Petroleum oil, etc., not to remain in open air or on sidewalk :**

In no case shall petroleum oil or any product thereof or any mixture of naphtha or inflammable fluid for illuminating purposes be allowed to remain in the open air or on any sidewalk beyond the front line of any building or in any street for a longer time than is actually necessary for the storage, shipment or delivery of the same, nor between the time of sunset of any one day and sunrise of the following day. *Id.* ch. 144, sec. 6.

**Penalty for violating provisions of chapter, or meddling with official brand :**

Every person who shall violate any of the foregoing provisions of this chapter or shall knowingly or willfully alter, efface or destroy any official mark or brand after the same has been placed by the inspector of kerosene or his deputies upon any barrel, cask or package in accordance with the provisions of this chapter, shall be fined not less than five hundred dollars nor more than one thousand dollars or shall be imprisoned not exceeding six months. *Id.* ch. 144, sec. 7.

**Penalties for putting petroleum, etc., not inspected, into a branded cask :**

Every person who shall, for the purpose of sale, put or cause to be put into any cask, barrel or other package which shall have been branded or marked by an inspector of kerosene in manner herein prescribed, any petroleum oil, kerosene or coal oil or naphtha or inflammable fluid or any mixture, product or component thereof or of either thereof, intended for sale, the same not having been first tested by such inspector in accordance with the provisions of this chapter, shall be fined not less than five hundred dollars nor more than one thousand dollars or shall be imprisoned not exceeding six months; and the name of every person convicted of any violation of this section shall be published in some newspaper published in or nearest

to the town where such offense was committed. *Id.* ch. 144, sec. 8.

**Appointment of inspectors—Manner of storing—May be prescribed by ordinances—Penalties :**

The town councils of the several towns, and the city councils of the cities of Newport and Providence, shall appoint annually one or more inspectors of petroleum oil, kerosene and coal oil, their products, compounds and components, and may limit and prescribe by ordinance the place or places and manner of storing or safe-keeping, and the quantity to be stored in any one place, and of sale within their respective towns and cities, of the said articles, their products, compounds and components and other like explosive substances, notwithstanding any provisions hereinbefore contained, and may inflict fines and penalties for the violation of such ordinances, not exceeding, for any one offense, two hundred dollars fine and six months imprisonment. Whenever a vacancy shall occur in the office of inspector of petroleum oil, kerosene and coal oil, the same shall be filled, as soon as may be, for the remainder of the year, by the town council of any town or the city council of any city, by a new election. *Id.* ch. 144, sec. 9.

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**NOTE.** See *Id.* chapter 279, concerning offenses against private property. Sections 2, 8 and 9 pertain to the burning, breaking and entering warehouses and the penalties for so doing.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Reasonably safe building.*

Plaintiffs stored carriages in defendants barn and paid storage therefor. The carriages were injured by the falling of the roof of the barn, due to its being overloaded with snow. *Held* that defendants were bound to furnish a building which was reasonably safe for such storage, and were liable if it proved to be unsafe, unless the defect was one they did not know of, and could not have discovered by the use of ordinary care. *Moulton & Remington v. Phillips & Sheldon*, 10 R. I. 218.

## H.

*Storage charges—Storing merchandise for railway company  
When company not liable for charges.*

A common carrier stored in a warehouse merchandise at different times, the consignees of which either could not be found or refused to receive the goods. The warehouseman paid the freight charges and gave non-negotiable receipts which set forth in most of the instances, the receipt of the goods from the carrier, the name of the consignee when marked on the goods, and the amount of freight charges paid; in a few instances the receipt of the goods from the carrier on account of the consignee; and in one or two instances the receipt of the goods from consignee or owner. *Held* that the non-negotiability of the receipts and the recital in them that the goods were received from the carrier did not render the carrier liable as a matter of law for the storage charges; *held further* that the terms of the receipts and the actions of the parties showed their understanding to be that the warehouseman received the goods as bailee for the owners and consequently the carrier was not liable for the storage charges due thereon. *Providence Warehouse Co. v. Providence & W. R. R. Co.*, 19 R. I. 423.

## N.

*Negligence—Definition.*

Legally speaking, negligence is the want of that care which

the law requires us to exercise,—which it exacts as a duty. This care may be due to one individual and not to another, and therefore negligence in fact is not always negligence in law, for unless a party can show that some duty to him is violated, he shows no legal negligence. *Tower v. Providence & W. R. R. Co.*, 2 R. I. 404; *Blyth v. Topham*, 1 Cro. J. 158.

## O.

*Damages—Measure of.*

The value of goods, converted by a warehouseman, at the time of the conversion is the measure of damages. *Fifth Nat. Bank v. Providence Warehouse Co.*, 17 R. I. 112.

## Q.

*Warehouse receipts—Liability when goods delivered without return of—Demand.*

A. procured a loan from the F. Bank, giving as collateral security a warehouse receipt as follows: "September 28, 1888. Received on storage of A. & Co., subject to the order of the F. Bank, three hundred and ninety cases of eggs. To be delivered according to the indorsement hereon, but only on the surrender and cancellation of this receipt, and on payment of the charges payable thereon." Across the face of the receipt was the word "Negotiable." The cases bore distinguishing marks. On November 1, 1888, the warehouseman delivered these cases to A. On March 11, 1889, the F. Bank brought *assumpsit* against the warehouseman for the value of the eggs, as A. had made default in the payment of his note. *Held* that the F. Bank was entitled to call for the identical cases stored, further that the warehouseman by his delivery to A. had violated his duty as bailee, and that he was not entitled to deliver to the F. Bank any other cases than those described in the warehouse receipt. Further *held* that by the delivery of the goods to A. a conversion thereof was shown and that the bank could maintain *assumpsit* without proof of demand. *Fifth Nat. Bank v. Providence Warehouse Co.*, 17 R. I. 112.

*Same—Construction of clause therein limiting liability.*

The receipt given by an express company as common carrier

for a package received by it for transportation limited the liability of the company to fifty dollars, "at which the article forwarded is hereby valued unless otherwise expressed." The package was lost by the negligence of the express company. *Held* that the receipt was a valid contract between the shipper and the carrier, and that fifty dollars was the limit of the carriers' liability in the absence of a declaration in the receipt that the article was of higher value. *Ballou v. Earle & Prew Express Co.*, 17 R. I. 441.

## CHAPTER XL.

## SOUTH CAROLINA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Public warehousemen :**

Any person engaged in the business of a warehouseman, or any corporation organized under the laws of this state and whose charter authorizes them to engage in the business of a warehouseman within this state, may become a public warehouseman and authorized to keep and maintain public warehouses for the storage of cotton, goods, wares, and other merchandise as hereinafter prescribed, and upon giving the bond hereinafter required. Code of South Carolina, 1902, sec. 1712.

**To give bond :**

Every person or corporation so authorized under the preceding section to become a public warehouseman shall give bond, to an amount based on the estimated value said warehouseman will provide storage for, to the clerk of the court of common pleas of the county wherein is situated the warehouse of said public warehouseman, with sufficient sureties, to be approved by the said clerk of court, for the faithful performance of the duties of a public warehouseman. *Id.* sec. 1713.

**Liability on bond :**

Whenever such warehouseman fails to perform his duty, or violates any of the provisions of this chapter, any person injured by such failure or violation may bring an action in his name, and to his own use, in any court of competent jurisdiction, on the bond of said warehouseman; and in case he shall fail in said action he shall be liable to the defendant for any costs which the defendant may recover in the action. *Id.* sec. 1714.

**When shall insure property left in warehouse—Receipt for goods :**

Every such warehouseman shall, when requested thereto, in writing, by a party placing property with him, or it, on storage, cause such property to be insured for whom it may concern. Every such warehouseman shall, except as hereinafter provided, give to each person depositing property with him for storage a receipt therefor, which shall be negotiable in form, and shall describe the property, distinctly stating the brand or distinguishing marks upon it, and if such property is grain the quantity and inspected grade thereof. The receipt shall also state the rate of charges for storing the property, and amount and rate of insurance thereon, and also the amount of the bond given to the clerk of the court as hereinabove provided: *Provided, however,* That every such warehouseman shall, upon request of any person depositing property with him for storage, give to such person his non-negotiable receipt therefor, which receipt shall have the words "non-negotiable" plainly written, printed or stamped on the face thereof. *Id.* sec. 1715.

**No warehouse or other receipt for property to be given unless actually received :**

No warehouseman, wharfinger, public or private inspector or custodian of property, or other person, shall issue any receipt, acceptance of an order or other voucher for or upon any goods, wares, merchandise, provisions, grain, flour or other produce or commodity to any person or persons purporting to be the owner or owners thereof, or entitled or claiming to receive the same, unless such goods, wares, merchandise, provisions, grain, flour or other commodity shall have been actually received into the store or upon the premises of such warehouseman, wharfinger, inspector, custodian or other person, and shall be in store or on the said premises as aforesaid and under his control at the time of issuing such receipt, acceptance or voucher. *Id.* sec. 1716.

**No such receipt to be issued as security unless goods are in custody :**

No warehouseman, wharfinger or other person shall issue any

receipt or other voucher upon any goods, wares, merchandise, grain, flour or other produce or commodity to any person or persons as security for any money loaned or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity shall be at the time of issuing such receipt in the custody of such warehouseman, wharfinger or other person, and shall be in store or upon the premises and under his control at the time of issuing such receipt or other voucher as aforesaid. *Id.* sec. 1717.

**No duplicate receipt to be issued unless so marked :**

No warehouseman, wharfinger, inspector, custodian or other person shall issue any second or duplicate receipt, acceptance or other voucher for or upon any goods, wares, merchandise, provisions, grain, flour or other produce or commodity while any former receipt, acceptance or voucher for or upon any such goods, wares, merchandise, provisions, flour, grain or other produce or commodity as aforesaid, or any part thereof, shall be outstanding and uncancelled, without writing in ink across the face of the same "Duplicate." *Id.* sec. 1718.

**No such goods to be removed without assent of person holding receipt :**

No warehouseman, wharfinger, or other person shall sell or incumber, ship, transfer or in any manner remove beyond his immediate control any goods, wares, merchandise, grain, flour or other produce or commodity for which a receipt shall have been given by him as aforesaid, whether received for storing, shipping, grinding, manufacturing or other purposes, without the written assent of the person or persons holding such receipt. *Id.* sec. 1719.

**Receipts transferable—Rights of transferee—Receipt to be delivered upon surrender of goods—Not negotiable :**

Warehouse receipts given for any goods, wares, merchandise, cotton, grain, flour, produce or other commodity and chattels stored or deposited with any warehouseman, wharfinger or other person, may be transferred by indorsement and delivery thereof, to the purchaser or pledgee, signed by the person to whom the receipt was originally given, or by an indorsee of such receipt;

and any person to whom the same may be so transferred shall be deemed and taken to be the owner of the goods, wares and merchandise therein specified, so far as to give validity to any pledge, lien or transfer made or created by such person or persons, but no property shall be delivered except on surrender and cancellation of said original receipt or the indorsement of such delivery thereon in case of partial delivery. The assignment of warehouse receipts which shall have the words "Not negotiable" plainly written or stamped on the face thereof shall not be effective until recorded on the books of the warehouseman issuing them. *Id.* sec. 1720.

#### **As to goods replevied or removed by law :**

So much of the preceding sections 1719 and 1720 as forbids the delivery of property except on surrender and cancellation of the original receipt or the indorsement of such delivery thereon, in the case of partial delivery, shall not apply to property replevied or removed by operation of law. *Id.* sec. 1721.

#### **Grain :**

When grain or other property is stored in public warehouses in such a manner that different lots or parcels are mixed together, so that the identity thereof cannot be accurately preserved, the warehouseman's receipt for any portion of such grain or property shall be deemed a valid title to so much thereof as is designated in said receipt, without regard to any separation or identification. *Id.* sec. 1722.

#### **Shall keep a book of entry :**

Every such warehouseman shall keep a book in which shall be entered an account of all his transactions relating to warehousing, storing and insuring cotton, goods, wares and merchandise, and to the issuing of receipts therefor, which books shall be open to the inspection of any person actually interested in the property to which such entries relate. *Id.* sec. 1723.

#### **Action for damages :**

All and every person or persons aggrieved by the violation of any of the provisions of section 1716 to 1721 may have and maintain an action at law against the person or persons

violating any of the provisions thereof to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as hereinbefore mentioned or not. *Id.* sec. 1724.

#### **When he may sell property left with him :**

Every public warehouseman who shall have in his possession any property by virtue of any agreement or warehouse receipt for the same, storage of the same, on which a claim for storage is at least one year overdue, may proceed to sell the same at public auction, and out of the proceeds may return all charges for storage of such goods, wares and merchandise, and any advances that may have been made thereon by him or them, and the expenses of advertising and sale thereof. But no sale shall be made until after the giving of printed or written notice of such sale to the person or persons in whose name such goods, wares and merchandise were stored, requiring him or them, naming them, to pay the arrears or amount due for such storage, and in case of default in so doing the goods, wares and merchandise may be sold to pay the same at a time and place to be specified in such notice. *Id.* sec. 1725.

#### **Notice of sale, how served :**

The notice required in the last preceding section shall be served by delivering it to the person or persons in whose name such goods, wares and merchandise were stored, or by leaving it at his usual place of abode, if within this state, at least thirty days before the time of such sale, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person, with an affidavit of the truth of the return. If the party storing such goods cannot with reasonable diligence be found within this state, then such notice shall be given by publication once in each week for two successive weeks, the last publication to be at least ten days before the time of such sale, in a newspaper published in the city or town where such warehouse is located; or if there be no such paper, in one of the principal newspapers published in the county in which said city or town is located. In the event that the

party storing such goods shall have parted with the same, and the purchaser shall have notified the warehousemen, with his address, such notice shall be given to such person in lieu of the person storing the goods. *Id.* sec. 1726.

#### **Surplus after sale :**

Such warehousemen shall make an entry, in a book kept for that purpose, of the balance or surplus, of proceeds of sale, if any, and such balance or surplus, if any, shall be paid over to such person or persons entitled thereto on demand. If such balance or surplus is not called for or claimed by such party or owner of said property within six months after such sale, such balance or surplus shall be paid by said warehouseman to the clerk of the court of the county in which said warehouse is located, who shall pay the same to the parties entitled thereto, if called for or claimed by the original owner within five years after the sale thereof, and such warehouseman shall at the same time file with said clerk an affidavit in which shall be stated the name and place of residence, so far as the same are known. *Id.* sec. 1727.

#### **Perishable property, how disposed of :**

Whenever a public warehouseman has in his possession any property which is of a perishable nature, or will deteriorate greatly in value by keeping, or upon which the charges for storage will be likely to exceed the value thereof, or which by its odor, leakage, inflammability, or explosive nature, is likely to injure other goods, such property having been stored upon non-negotiable receipt, and when said warehouseman has notified the person in whose name the property was received to remove said property, but such person has refused or omitted to receive and take away such property and to pay the storage and proper charges thereon, said public warehouseman may in the exercise of a reasonable discretion sell the same at public or private sale, without advertising, and the proceeds, if there are any proceeds after deducting the amount of said storage and charges and expenses of sale, shall be paid or credited to the person in whose name the property was stored; and if said person cannot be found, on reasonable inquiry, the sale may be

made without any notice, and the proceeds of such sale, after deducting the amount of storage, expenses of sale, and other proper charges, shall be paid to the clerk of the court of the county wherein said warehouse is situated, who shall pay the same to the person entitled thereto if called for or claimed by the rightful owner within one year of the receipt thereof by said clerk. *Id.* sec. 1728.

### **Same :**

Whenever a public warehouseman, under the provisions of the preceding section, has made a reasonable effort to sell perishable and worthless property, and has been unable to do so, because of its being of little or no value, he may then proceed to dispose of such property in any lawful manner, and he shall not be liable in any way for property so disposed of. *Id.* sec. 1729.

### **Liability for storage :**

Whenever a public warehouseman, under the provisions of the two preceding sections, has sold or otherwise disposed of property and the proceeds of such sale or disposition have not equalled the amount necessary to pay the storage charges, expenses of sale and other charges against said property, then the person in whose name said property was stored shall be liable to said public warehouseman for an amount which, added to the proceeds of such sale, will be sufficient to pay all of the proper charges upon said property; or in case such property was valueless and there were no proceeds realized from its disposition, the person in whose name said property was stored shall be liable to said public warehouseman for all proper charges against said property. *Id.* sec. 1730.

### **Maximum rates for selling leaf tobacco fixed—Bills of same to be furnished the seller :**

The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses in this state shall not exceed the following schedule of prices, to wit: For auction fees, fifteen (15) cents on all piles of one hundred pounds or less, and twenty-five (25) cents on all piles of over one hundred pounds

and less than two hundred pounds; fifty (50) cents per pile for piles of two hundred pounds or over. For weighing and handling ten (10) cents per pile for all piles of less than one hundred pounds; for all piles of over one hundred pounds, at the rate of ten (10) cents per hundred pounds; for commission on the gross sales of leaf tobacco in said warehouses, not to exceed two and one half per centum. The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill, plainly stating the amount charged for weighing and handling, the amounts charged for auction fees and the commission charged on such sale; and it shall be unlawful for any other charges or fees exceeding those herein named to be made or accepted: *Provided*, That the provisions of this section shall not apply to the counties of Horry, Sumter, Pickens, and Chesterfield. *Id.* sec. 1731.

#### **Railroad commission to fix storage charges on freight :**

Power is hereby conferred on the railroad commission of South Carolina, and they are required to fix and prescribe a schedule of maximum rates and charges for storage of freight made and charged by railroad companies doing business in this state, and to fix at what time, after the reception of freight at place of destination such charges of storage shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination, and residence of consignee, and such other facts as in their judgment should be considered in fixing the same.

All the provisions of the act creating said railroad commission, and acts amendatory thereof, prescribing the procedure of said commission in fixing freight and passenger traffics, and hearing complaints of carrier and shipper, and of altering and amending said tariffs, shall apply to the subject of fixing and amending rates and charges for storage, as aforesaid. *Id.* sec. 1732.

#### **Discrimination and excessive charges prohibited :**

No railroad company shall make or retain, directly or indirectly, any charge for storage or freight greater than that fixed by the commission for each particular storage, nor shall they

discriminate directly or indirectly by means of rebate, or any device in such charges, between persons. *Id.* sec. 1733.

**Penalty for overcharge of storage :**

If any railroad company shall violate the provisions of this chapter, either by exceeding the rates of storage prescribed, or by discriminating, as aforesaid, the person or persons so paying such overcharge, or subjected to such discrimination, shall have the right to sue for the same in any court of this state having jurisdiction of the claim, and shall have all the remedies, and be entitled to recover the same penalties and measure of damages as is prescribed in the case of overcharge of freight rates, upon making like demand as is prescribed in such case, and after like failure to pay the same. *Id.* sec. 1734.

**Common carriers may sell property unclaimed for six months :**

Every railroad corporation, express company, and the proprietors of every steamboat engaged in the transportation of passengers and freight, or either, which shall have had unclaimed freight or baggage not perishable in its possession for the period of six months may proceed and sell the same at public auction, after giving notice to that effect in one or more newspapers published in the state or at the place where such goods are to be sold once a week for not less than four weeks, and shall also keep a notice of such sale posted for the same time in a conspicuous place in the principal office of said company. *Id.* sec. 1735.

**Contents of advertisement :**

Said notice shall contain, as near as practicable, a description of such freight or baggage, the place and time when and where left, together with the name and residence of the owner of the freight or baggage, or person to whom it is consigned, if the same be known. *Id.* sec. 1736.

**Disposition of moneys received :**

All moneys raised from the sale of freight or baggage as aforesaid, after deducting therefrom charges and expenses for the transportation, storage, advertising, commissions for sell-

ing the property, and any amount previously paid for advances on such freight and baggage, shall be paid by the company to the persons entitled to receive the same. *Id.* sec. 1737.

**Books of sale to be kept for inspection :**

The said company shall keep books of record of all such sales as aforesaid, containing copies of such notices, proofs of advertisements and posting, affidavit of sale, with the amount for which each parcel was sold, the total amount of charges against such parcel, and the amount held in trust for the owner, which books shall be kept open for inspection by claimants, at the principal office of said company, and at the office the sale was made. *Id.* sec. 1738.

**When and by whom may be sold—Surplus deposited with clerk of court :**

It shall be lawful for any mechanic, in this state, when property may be left in his shop for repair, to sell the same at public outcry, to the highest bidder, after the expiration of one year from the time such property shall have been repaired; and the same shall be sold by any magistrate of the county in which the work was done: *Provided*, That the said magistrate shall, before selling such property, advertise the same, for at least ten days, by posting a notice in three of the most conspicuous places in his township. And he shall, after deducting all proper costs and commissions, pay to the claimant the money due to him, taking his receipt for the same; after which he shall deposit the said receipt, as well as the terms of costs and commissions, with the remainder of money or proceeds of the sale, in the office of the clerk of the court, subject to the order of the owner thereof, or his legal representatives. *Id.* sec. 1739.

**Commissions on such sales :**

The magistrate who shall sell such property shall be entitled to receive the same commissions as are now allowed by law for the sale of personal property by constables. *Id.* sec. 1740.

**No deduction in tare, etc., allowed :**

The custom of making a deduction from the actual weight of bales of unmanufactured cotton, as an allowance for tare, break-

age, or draft thereon, is abolished; and all contracts made in relation to cotton shall be deemed and taken as referring to the true and actual weight thereof, without deduction for any such tare or draft. General Statutes, South Carolina, 1882, sec. 1195.

#### Rates of storage :

The rates of storage of cotton shall not exceed twelve and one half cents per week for each bale of cotton; the charges for weighing cotton shall not exceed ten cents for each bale; and any person violating the provisions of this section, or either of them, shall forfeit to the owner of the cotton ten dollars for each offense, which may be recovered by him in any court of competent jurisdiction in this state. *Id.* sec. 1196.

#### Above section construed—Being penal must be strictly interpreted :

The defendant, a factor, was sued by his principal for having charged him with a greater amount for storage than the rate allowed by the above statute, and in the suit demanded the penalty therein provided for. It appeared that the defendant had not, in fact, stored the same and that he was in no sense a warehouseman. The property in question had been actually stored in a warehouse and the defendant had actually paid rates greater than allowed by the above statute for such storage. It was *held* that this statute, being penal, must be strictly construed and so construing it, it was perfectly manifest that the act prohibited by the statute is *making* of a charge for storage in excess of the rate there provided, not the *paying* of a charge in excess of the rate. Therefore, judgment given for defendant below was affirmed on appeal. *Holman v. Frost & Co.*, 26 S. C. 290.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—When property liable for debt of bailee—Rule stated.*

The rule which renders the property of the true owner liable for the debt of the bailee, or person in possession, is applicable only where the original credit was based on the property; and the debt must not be of doubtful beginning, but the plaintiff must show it to have been contracted subsequent to the possession of his debtor. *Ford v. Aiken*, 1 Strob. 93.

*Same—Statute of limitations—When it begins to run.*

Where goods held for safe-keeping are destroyed, the statute of limitations begins to run from the time of the loss, or, at the latest, from the time the owner has notice of the loss, and not from the time of demand. *Cohrs v. Fraser*, 5 S. C. 351.

## B.

*Ordinary diligence—Definition.*

Ordinary diligence, in the law of bailments, is a relative term, and signifies that care which men of common prudence generally take of like articles of their own, at the time and in the place where the question arises. *Scott, Williams & Co. v. Crews*, 2 S. C. 522.

*Delivery—To agent.*

To charge a mandatory with an article lost, it is not necessary that, in every case, the delivery should have been to him individually, or to one expressly or specifically authorized to receive for him; but an agency to receive may be implied in the same manner as such agency may be implied in relation to articles which were to be carried for hire. *Lloyd v. Barden & Brooks*, 3 Strob. 343.

*Same—Depositing in warehouse—Stoppage in transitu.*

The deposit of goods when they have reached their destination, in a warehouse, subject to the order and control of the buyer, is an executed delivery, as effectual to defeat the right of

stoppage *in transitu*, as if they had been deposited in the warehouse of the buyer, and a deposit, in like manner, in the warehouse of the vendor, divests his right to retain for the price which may be unpaid. *Frazer v. Hilliard et al.*, 2 Strob. 309.

*Same—When liability attaches.*

In an action against a railroad company for the loss of goods in transportation, it appeared that the goods had never been removed from the car. The defendant attempted to show that its liability was that of a warehouseman, and that the transit had ended. It was *held* that there must be an initial point in the matter of the liability of warehousemen and that this initial point was the moment the storage begun, which was not shown in this case. *Hipp v. Southern Ry. Co.*, 50 S. C. 129.

*Warehouseman—Pleading—Statute of limitations—Code—Practice.*

In an action against one charged as a warehouseman, to recover the value of goods deposited for safe-keeping, the answer set up as defenses: (1) A denial of the alleged bailment; (2) an allegation that the goods were destroyed by an irresistible force, and without the fault of the defendant; and (3) a plea of the statute of limitations. *Held* that the statute of limitations was properly pleaded, and could not be stricken out of the answer on the ground of inconsistency. An answer under the code may set forth as many legal defenses as were allowed under the former practice. A motion to strike out a defense as inconsistent with other defenses alleged in the answer should be made on notice and before trial, and the practice prescribed by the 21st rule of the circuit courts might well be followed in such cases. *Cohrs v. Fraser*, 5 S. C. 351.

**H.**

*Storage charges—Implied contract to pay.*

Where one allowed a warehouseman to receive and store his goods it was *held* that there was an implied contract for the payment of reasonable storage charges therefor. *Derereux v. Fleming*, 53 Fed. Rep. 401, distinguishing *Somes v. Shipping Co.*, 8 H. L. Cas. 338.

*Lien for storage charges—General balance—Must be under one transaction but not at one time necessarily—Charges continue after warehouseman holding under his lien.*

A warehouseman's lien upon goods stored is specific and not general but if the goods were received under one transaction and form a part of the same bailment, he may deliver a part of the goods, and retain the residue for the price chargeable on all the goods received, provided the ownership of the whole is in one person. This phrase "under one transaction" does not mean at the same time, but pursuant to one transaction. A contention that a warehouseman was not entitled to his charges from the time he first asserted his lien on the goods up to the date of the judgment on the ground that during such period he held the goods for his own benefit, could not be sustained. The right to hold the goods until the charges are paid under the original contract of storage continues and the original contract does not cease until its charges are paid, remitted, or tendered. *Derereux v. Fleming*, 53 Fed. Rep. 401, distinguishing, *Somes v. Shipping Co.*, 8 H. L. Cas. 338.

## L.

*Trover—Bailee may maintain—When against owner.*

The bailee of goods may maintain trover or trespass against any one but the legal owner; and a bailee whose possession is coupled with an interest, may maintain trespass, even against the owner, for tortiously taking the goods out of his possession. *Jones v. M'Neil*, 2 Bail. 466.

## N.

*Neglect—Proprietor of gin.*

The proprietor of a cotton machine, for cleaning cotton-wool from its seed, who takes cotton to gin for a reward, is answerable as a bailee for ordinary neglect. *Foster v. Taylor*, 2 Brev. 348.

## P.

*Insurable interest—Warehousemen have, in stored cotton held in various ways.*

Warehousemen insured certain bales of cotton stored with them in their own name on a form of policy intended for ware-

houses containing the special clause "cotton in bales, their own or held by them in trust, or on commission, or on joint account with others, or sold but not delivered," contained in their warehouse. After destruction by fire the owner of the goods as assignee of the policy sued the insurance company thereon. An instruction by the court to the jury that the warehousemen had a right to insure in their own name under the above terms the cotton in their warehouse, that they had a right to sue therefor in their own name and having such right they could lawfully assign the same, was *held* correct. *Pelzer Mfg. Co. v. St. Paul Fire & M. Ins. Co.*, 41 Fed. Rep. 271.

*Same—Right of subrogation prevented by conditions in lease of insured—Effect on policy.*

Where the owner of goods, who was the assignee of the fire insurance policy taken out thereon by the warehouseman, sues on such policy for the recovery of the value of the goods which were destroyed, it was shown that the warehouse was constructed on ground leased from an adjacent railroad company and that the lease contained a covenant that the latter would not be liable for any damage or loss occasioned by its locomotives. This clause in the lease was not made known to the insurance company at the time of the issuance of the policy and the company contended that as its right of subrogation was thereby denied to it, its policy was therefore void. At trial the court left to the jury for its determination the question as to whether or not it would have made any difference in the risk if the warehouseman had stated this fact. The jury found that from custom in that part of the country it would have made no difference. It was *held* on appeal that this being the case that it would not enter into or become a part of the contract of insurance. *Pelzer Mfg. Co. v. St. Paul Fire & M. Ins. Co.*, 41 Fed. Rep. 271; *Home Ins. Co. v. Baltimore Warehouse Co.*, 93 U. S. 527.

## R.

*Bills of lading—Title passes by delivery as against attaching creditor of the vendor.*

Where a bank honored a draft with a bill of lading attached

thereto, it was *held* the title of the goods represented by the bill of lading passed to the bank as against a creditor of the vendor, who attached the goods subsequent to the bank's possession of the bill of lading. *Union Nat. Bank v. Rowan*, 23 S. C. 339.

## CHAPTER XLI.

**SOUTH DAKOTA.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Authority conferred upon railroad commissioners :**

That the duties imposed by the provisions of this act and the powers conferred therein devolve upon the board of railroad commissioners. Grantham's Annotated South Dakota Statutes, 1901, sec. 228.

**Duties and powers :**

That it shall be the duty of the railroad commissioners of the state of South Dakota to supervise the handling, inspection, weighing, grading and storage of grain and seeds; to establish all necessary rules and regulations for the weighing and inspection of grain, and for the management of the public warehouses of the state, as far as such rules and regulations may be necessary to enforce the provisions of this act, or any law of this state, in regard to the same; to investigate all complaints of fraud or oppression in the grain trade of this state, and to correct the same as far as it may be in their power. *Id.* sec. 229.

**Printing and publishing of rules :**

The rules and regulations, so established, shall be printed and published by said railroad commissioners in such manner as to give the greatest publicity thereto and the same shall be in force and effect until they shall have been changed or abrogated by said commissioners in a like public manner. *Id.* sec. 230.

**Public warehouses :**

That all elevators and warehouses in this state wherein and whereat grain is purchased, received or handled are hereby declared to be public warehouses. *Id.* sec. 231.

**License :**

That it shall not be lawful for the proprietor, lessee or man-

ager of any warehouse or elevator, mentioned in section four (§ 231) of this act, to transact any business until a license has been procured from the railroad commissioners permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by the railroad commissioners upon a written application, which shall set forth the location and name and capacity of such elevator or warehouse and the individual name of each person interested as owner or principal in the management of the same; or, if the elevator or warehouse be owned or managed by a corporation, the name of the president, secretary and treasurer of such corporation shall be stated, and the said license shall give authority to carry on and conduct the business of a public warehouse, in accordance with the laws of this state; *Provided*, That it shall be unlawful for any warehouseman, company or corporation engaged in purchase and storage of grain, subject to the provisions of this act, to enter into any contract, agreement or combination with any other warehouse, company or corporation for pooling in the purchase and storage of grain by different and competing warehousemen, companies or corporations to divide between them the aggregate or net proceeds of margins or profits resulting from their said business as warehousemen, or any portion thereof, and in any case of such contract, agreement or combination for such pooling of their said business as warehousemen, each day of its continuance shall be deemed a separate offense. *Id.* sec. 232.

### **Bond :**

That the proprietor, lessee or manager of any warehouse or elevator in this state in which grain is stored for a compensation, shall before receiving the license as hereinbefore provided, file with the commissioners granting the same a bond to the state of South Dakota, with good and sufficient sureties, in the penal sum of not less than \$2,000 nor more than \$50,000, for each and every elevator operated, proportioned to the capacity of the elevators or warehouses, in the discretion of said commissioners, for each license so granted, conditioned for the faithful performance of duty as a public warehouseman and a full and unreserved compliance with all the laws of this state in relation

thereto. A fee of \$1.00 shall be paid for each license by the person, association, or corporation applying for the same. *Id.* see. 233.

#### **Penalty for transacting business without license :**

That any person, association or corporation who shall transact the business of public warehouseman, without first procuring a license as herein provided, shall be deemed guilty of a misdemeanor and on conviction shall be fined a sum not less than \$100 for each and every day such business has been carried on. Every such license shall expire on the first day of August next following the issuance thereof, and the said board of railroad commissioners may at any time for good cause shown, in their discretion revoke any warehouseman's license by them granted, but the said warehouseman shall have the right of appeal from said decision to the circuit court in and for the county in which his warehouse is located, upon filing a bond in the sum of \$200, conditioned for the payment of the costs of said appeal provided the same is not sustained by said court. *Id.* sec. 234.

#### **Warehouse receipts :**

All owners of such bonded warehouses and elevators so licensed shall upon the request of any person delivering grain at such warehouse give a warehouse receipt therefor, subject to the [order of the] owner or consignee, which receipt shall bear date corresponding with the receipt of the grain and shall state upon its face the quality and grade fixed upon the same; also the amount deducted for dirt or cleaning. All warehouse receipts issued for grain received shall be consecutively numbered, and no two receipts bearing the same number and series shall be issued during the same year. No warehouse receipt shall be issued except upon actual delivery of grain into such warehouse. No such warehouseman shall insert into any warehouse receipt issued by him any language in anywise limiting or modifying his liability as imposed by the laws of this state. *Id.* sec. 235.

#### **Above section construed :**

The above section will estop a warehouseman from setting up as a defense against a *bona fide* holder of a receipt, evidence

that the goods were never stored in his warehouse. *Fletcher v. Great Western Elevator Co.*, 12 S. D. 643.

#### **Grain to be delivered upon the return of the receipt :**

On the return of any warehouse receipt properly indorsed, and the tender of all proper charges upon the property represented by it, such grain, or any equal quality of the same grade, shall be immediately delivered to the holder of such receipt as rapidly as due diligence, care and prudence, will justify. Nothing in this section shall be construed to mean the delivery of the identical grain specified in the receipt so presented ; but an equal amount of the same grade, and if the grain so delivered has not been cleaned by said warehousemen, there shall be added to the amount so delivered the amount originally deducted from the grain stored for dirt, which amount shall also be delivered ; and when such grain is to be shipped to some terminal point where such elevator company or warehouseman is there doing business, such elevator company or warehouseman shall guarantee both weight and grade. Grantham's Annotated South Dakota Statutes, 1901, sec. 236.

#### **Report to railroad commissioners :**

That every owner or manager of such licensed warehouse or elevator, at such times as the commissioners shall require, shall furnish to the commissioners in writing, under oath, a statement of the condition and management of his business as such warehouseman. Such report shall show the total number of bushels of each kind and grade of grain purchased and in store, and the number delivered out, and the number remaining in store at the date of the report. But no warehouseman shall be required to weigh the grain on hand more than once in each year ; and the warehouseman shall, in addition to the statement herein, be required to furnish to the commissioners any other information regarding the business of his warehouse which the commissioners may require. *Id.* sec. 237.

#### **Inspection of warehouses :**

The commissioners shall cause every warehouse and the business thereof, and the mode of conducting the same to be inspected, at such times as the commissioners may order, by one or more members of the commission, who shall report in writ-

ing to the commissioners the result of such examination; and the property, books, records, accounts, papers and proceedings, kept at each warehouse, so far as they relate to their condition, operation, or management, shall at all times during business hours be subject to the examination and inspection of such commissioners; and said board of commissioners may, in all matters arising under the provisions of this law, exercise the power to subpoena and examine witnesses conferred upon said board by law in relation to railroad companies. *Id.* sec. 228.

#### **Grades to be established :**

The railroad commissioners shall, before the first day of September in each year, establish a grade for all kinds of grain bought or handled by any elevator or warehouse in this state, which shall be known as "South Dakota grades," but which shall not differ from grades in the state of Minnesota, and the grades so established shall be printed and published in the manner required by section five [§ 232] of this act: *Provided*, that no such publication shall be necessary except when changes are made in such grades, and when [then] the changes so made only shall be published. And said board of railroad commissioners shall have supervision of the grading, weighing and shipping all grain purchased or handled by public warehousemen in South Dakota; and all public warehousemen shall grade all grain purchased or handled by them in conformity with the established "South Dakota grades," as herein provided. Any person aggrieved at the weights or grades given by any warehouseman may appeal to the board of railroad commissioners, and it is hereby made the duty of said board to, without delay, inquire into said grievance and adjust the same in accordance with established standards. *Id.* sec. 239.

#### **Moneys to be paid into state treasury :**

All moneys collected by the railroad commissioners, as herein provided for, shall be paid into the state treasury. *Id.* sec. 240.

#### **Duty of state treasurer :**

It shall be the duty of the treasurer of the state of South Dakota to receive all moneys aforesaid and all fines and penalties collected by virtue of this act, and to keep a separate account of the same, and pay the same only on the order of the

railroad commissioners to defray the expense of carrying the provisions of this act into effect. *Id.* sec. 241.

#### **Bailment, not a sale—Insolvency :**

Whenever any grain shall be delivered to any person, association, firm or corporation, doing a grain warehouse or grain elevator business in this state, and receipts issued therefor, providing for a delivery of a like kind, amount and grade, to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered ; and in no case shall the grain so stored be liable to seizure upon process of any court in actions against such bailee, except actions by owners or holders of such warehouse receipts to enforce the terms of the same ; but such grain shall at any and all times, in the event of the failure or insolvency of such bailee, be first applied exclusively to the redemption of outstanding warehouse receipts for grain so stored with such bailee. And in such event grain on hand in any particular elevator or warehouse shall first be applied to the redemption and satisfaction of receipts issued from such warehouse. *Id.* sec. 242.

#### **Denial of storage not permissible :**

No person, association, firm or corporation, doing a grain warehouse, or grain elevator business in this state, having issued a receipt for the storage of grain, as in section one of this act provided, shall thereafter be permitted to deny that the grain represented thereby is the property of the person to whom such receipt was issued, or his assigns thereof, and such receipts shall be deemed and held, so far as the duties, liabilities and obligations of such bailee are concerned, conclusive evidence of the fact that the party to whom the same was issued or his assigns thereof, is the owner of such grain, and is the person entitled to make surrender of such receipt and receive the grain thereby promised to be delivered. *Id.* sec. 243.

#### **Above section construed—Pledgee may sue in his own name :**

Pledgee being assignee of receipt may sue in his own name. *Citizens' Nat. Bank v. Great Western Elevator Co.*, 13 S. D. 1.

#### **Larceny—Punishment :**

Every person, and every member of any association, firm or

corporation doing a grain warehouse or grain elevator business in this state who shall after demand, tender and offer as provided in section nine [§ 236] of this act, willfully neglect or refuse to deliver, as provided by said section nine, to the person making such demand, the full amount of grain of the kind and grade or market value thereof which such person is entitled to demand of such bailee, shall be deemed guilty of larceny and shall on conviction thereof be punished by a fine or imprisonment, or both, as is prescribed by law for the punishment of larceny. Grandham's Annotated South Dakota Statutes, 1901, sec. 244.

### **Receipts :**

Upon the delivery of grain from store upon any receipt, such receipt shall be plainly marked across its face the word "cancelled" and shall thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. No warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued, and which is to be represented by the receipts, nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received. Nor shall more than one receipt be issued for the same lot of grain, except in cases where receipt for part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder, but the new receipt shall bear the same date as the original and shall state on the face that it is balance of receipt of the original number, and the receipt upon which a part has been delivered shall be cancelled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be cancelled the same as if the grain had been delivered from store, and the new receipts shall express on their face that they are a part of another receipt, or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued, as explanatory of the change; but no con-

solidation of receipts of dates differing more than ten (10) days shall be permitted, and all new receipts issued for old ones cancelled, as herein provided, shall bear the same date as those originally issued as near as may be. *Id.* sec. 245.

#### **Schedule of rates to be published :**

Every warehouseman of bonded warehouses shall be required during the first week in September of each year to publish in one of the newspapers, daily if there be such, published in the city or village in which said warehouse is situated, a table or schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased during the year, and he shall cause the same to be plainly printed on the warehouse receipts or tickets, and such published rates, or any published deduction of them shall apply to all grain received into such warehouse from any person or source. The charges for storage or handling shall in all cases be equal and just, and shall be approved by the board of railroad commissioners before going into effect and shall not exceed the usual charges heretofore existing. *Id.* sec. 246.

#### **Attorney general—State's attorney :**

The attorney general of the state shall be *ex officio* attorney for the railroad commissioners and shall give them such counsel and advice as they may from time to time require, and he shall institute and prosecute any and all suits which said railroad commissioners may deem expedient and proper to institute, and he shall render to such railroad commissioners all counsel, advice and assistance necessary to carry out the provisions of this act or any law which said commissioners are required to enforce according to the true intent and meaning thereof. In all criminal prosecutions against a warehouseman for the violation of any of the provisions of this act it shall be the duty of the state's attorney of the county in which such prosecution is brought to prosecute the same to a final issue. *Id.* sec. 247.

#### **Official bonds to be filed with state auditor :**

All official bonds required to be given by any person, company or corporation, pursuant to the provisions of this act, shall be filed in the office of the auditor of the state of South

Dakota, and suit may be brought thereon in any court having jurisdiction thereof, for the use of any person or persons complaining of having sustained any injury by reason of a violation of the conditions thereof. *Id.* sec. 248.

**Certain combinations unlawful—Posting of rules :**

It shall be unlawful for any proprietor, lessee or manager of any public warehouse to enter into any contract, agreement, understanding or combination with any railroad company, or any corporation, or with any individual or individuals by which the property of any person is to be delivered to any public warehouse for storage or for any other purpose contrary to the direction of the owner, his agent or consignee. Each warehouseman shall also keep posted at all times in a conspicuous place in his warehouse a printed copy of the schedule of grades established by the commissioners and a printed copy of this act, and of the rules and regulations for the management of warehouses established by the commissioners, to be furnished by the railroad commissioners. *Id.* sec. 249.

**Penalty for violation of the provisions of this act :**

That any person, association or corporation, or any representative thereof, who shall knowingly cheat or falsely weigh any wheat or other agricultural products or who shall violate the provisions of any section of this act, or who shall do or perform any act or thing therein forbidden, or who shall fail to do and keep the requirements as herein provided, shall be deemed guilty of a misdemeanor and shall on conviction thereof be subjected to a fine of not less [than] one hundred dollars, nor more than one thousand dollars, and be liable in addition thereto to imprisonment for not more than one year in the state prison at the discretion of the court. *Id.* sec. 250.

**Test of scales—Standard weights and measures :**

Said board of commissioners or any one or more members thereof may, at any time, without notice, enter any public warehouse in this state and test and seal all weighing scales and measures used in conducting said warehouse business, and for that purpose the said commission is hereby authorized to provide itself with standard weights and measures. *Id.* sec. 251.

**Producers not bound under the provisions of this act :**

Nothing in this act shall be so construed as to prevent the producers from marketing, storing or shipping their own products in any manner they choose, without procuring any license or giving any bonds under any provisions of this act. *Id.* sec. 252.

**Side tracks :**

Every railroad company doing business or operating a line of railroad in this state shall upon application in writing made by any person, firm or corporation owning or operating an elevator, warehouse or flouring mill, or a manufactory, upon or immediately contiguous to its right of way, at any of its regular stations, provide suitable side track facilities and running connections between its main track and such elevator, warehouse, flouring mill or manufactory, within twenty days after such application in writing shall be served upon any station agent of such company in the county wherein such side track and running connections is desired, and such side track facilities and running connections shall be made by such railroad company without reference to the size, cost or capacity of such elevator, warehouse or flouring mill; but such railroad company shall not be required to furnish any side tracks except upon its own land, or beyond the right of way over which it is operating its line of railroad; provided that such side track need not be furnished when the capacity of any elevator is less than 10,000 bushels, unless so ordered by the board of railroad commissioners. Provided further, that any person wishing to avail himself of the benefits of this act shall so notify the railroad company before building such elevator, and the railroad company shall have the privilege of granting him a site on the side tracks of the company already constructed. *Id.* sec. 253.

**Restrictions :**

That no elevator, warehouse, flouring mill or manufactory shall be constructed within one hundred (100) feet of any existing structure, and shall be at a safe fire distance from all station buildings, and so as not to conflict with the safe and convenient operation of such railroad. *Id.* sec. 254.

**For shippers :**

Where stations are more than twelve miles apart such rail-

road company, when required so to do by the board of railroad commissioners, shall construct and maintain a side track for the use of shippers between such stations. *Id.* sec. 255.

#### **Penalty :**

A failure or refusal on the part of such railroad company to construct side tracks and running connections as provided in sections one and three [§§ 253, 255] of this act, shall render it liable to the applicant for same for all damages he may sustain by reason of such failure and refusal; and such railroad company shall forfeit not less than one hundred dollars nor more than three hundred dollars for each day it shall fail or refuse to comply with the provisions of said sections one and three of this act as to the construction of such side tracks and running connections; and it shall be the duty of the state's attorney of the county where such failure occurs, to prosecute in the name of the state all actions for the recovery of such forfeitures, and when recovered the same shall be paid into the school fund of the county. *Id.* sec. 256.

#### WAREHOUSE SITES.

##### **Duty of railway commissioners :**

Whenever any person, firm or corporation shall have been refused the privilege of constructing a public warehouse upon the right of way, depot grounds or warehouse lots of any railway at any station thereon in the state of South Dakota, it shall be the duty of the board of railway commissioners to immediately, upon being notified of such refusal, to serve ten days' notice upon said railway company at the time of the investigation hereinafter provided for and then at the time so appointed appear at the station where such public warehouse site is desired and upon investigation and consideration of all the circumstances surrounding the case, determine whether the public welfare will be advanced by the construction of another warehouse at such station. *Id.* sec. 257.

##### **Decision of the board to be final, when :**

If the said board of railway commissioners shall after such consideration determine that the public welfare would not be advanced by the construction of another warehouse at said station, the said board shall so inform the applicant for said site

and such determination shall be final and no further procedure shall be had in the premises. *Id.* sec. 258.

#### **Board to fix location :**

If the said board of railway commissioners shall determine after due investigation that the construction of such warehouse is necessary and that the public welfare will be advanced thereby, then it shall be the duty of said board to fix the location of such public warehouse upon the right of way, depot grounds or warehouse lots of the railway company concerned, having in view in fixing such location the interests and convenience of said railway company and of the public, and a memorandum of such determination and of the location so selected shall be furnished to the applicant for such public warehouse site. *Id.* sec. 259.

#### **Compensation for property :**

In all cases where persons or firms invested with the privilege of taking private property for public use under this act shall determine to exercise such privilege, it shall be the duty of such person or firm to file a petition in the circuit court of the county in which the property to be taken is situated, praying that a just compensation to be made for such property may be ascertained by a jury. *Id.* sec. 260.

#### **Petition to contain what :**

Such petition shall name the person or firm desiring to take such private property for public use as plaintiff, and the railway owning such property as defendant. It shall contain a description of the property to be taken and the purpose for which the same is to be so taken shall be clearly set forth in the petition. Such petition shall be verified in the manner provided by law for the verification of complaints in the circuit court, and the affidavit of verification shall contain the further statement that the proceeding is in good faith and for the purposes specified in the petition. *Id.* sec. 261.

#### **Amendments to petition :**

If any person or corporation who are proper parties defendant to such proceeding, or any property affected thereby, shall have been omitted from said petition or notice, the plaintiff may file amendments to the same, which amendments from the

filings thereof shall have the same effect as though contained in said petition or notice. *Id.* sec. 262.

#### **Plaintiff's motion for action :**

At any time after filing the petition the plaintiff may issue a summons to the defendant or defendants which shall be entitled in the action or proceeding, and state the time and place of filing the petition, the nature of the proceeding, and contain a notice to the effect that if the defendant or defendants do not appear in said proceeding within twenty days from the service thereof, exclusive of the day of service, the plaintiff will apply to the court for an order to empanel a jury and ascertain the just compensation for the property proposed to be taken in such proceeding. *Id.* sec. 263.

#### **Application for drawing of jurors :**

If no appearance be made in said proceeding by the defendant or defendants within the time specified in the summons, the plaintiff upon affidavit of the default may apply to the court for an order directing the clerk of the court to draw and summon eighteen jurors to attend at the courthouse or place of holding the circuit court of the county to be specified in such order. Said jurors shall be drawn and summoned in the same manner as jurors are drawn and summoned for the regular or special term of the circuit court. If any of the defendants shall have appeared in such proceeding, the plaintiff shall give such defendants three days' notice of the time and place where application shall be made to the court for the order to draw and summon the jurors. *Id.* sec. 264.

#### **Trial of action :**

At the time and place specified in the order mentioned in section eight, a special term of the court shall be held, at which the proceedings in empaneling the jury, trial, and rendering of the verdict or verdicts shall be conducted in the same manner as trials of actions in the circuit court. *Id.* sec. 265.

#### **Pleadings :**

No other pleadings shall be necessary in such proceeding except the petition of the plaintiff, and such as may become necessary to enable the court to determine conflicting claims of the

defendants to the compensation awarded by the verdict of the jury or some part thereof. *Id.* sec. 266.

**Jury may view premises, when :**

Upon the demand of any party to the proceeding, if the court shall deem it necessary, the jury may view the premises under the rules of law for viewing by the jury. *Id.* sec. 267.

**Issue or question to be tried—Limited to what :**

The only issue or question which shall be tried by the jury upon the petition shall be the question of compensation to be paid for the property so taken, but in case there shall be adverse claimants for such compensation for any part of such property, the court may require such adverse claimants to interplead, so as to fully determine the rights and interest in such compensation. *Id.* sec. 268.

**Verdict of jury :**

Upon the return of the verdict the court shall order the same to be recorded, and shall enter such judgment thereon as the nature of the case may require and upon the payment or tender of the amount of damages assessed by the jury, with the clerk of said court for the benefit of such railway company said plaintiff may proceed to erect a public warehouse upon the site selected as aforesaid, and condemned as hereinbefore provided and to occupy the same. The right of occupancy only shall be vested in said plaintiff or his or their heirs or assigns. *Id.* sec. 269.

**Extension of lands condemned :**

Such condemnation of such right of way, depot grounds or warehouse lots and said right of occupancy shall only extend to so much of said grounds as is necessary for the accommodation of such public warehouse and for the convenient operation thereof, together with necessary grounds and free access thereto from the nearest public thoroughfare. *Id.* sec. 270.

**Board of appraisers—Duties of :**

The applicant of such public warehouse site may thereupon, after five days' notice to such railway company, which notice shall be served as summons are required by law to be served in civil actions, apply to the circuit court in and for the county

where such proposed public warehouse is situated, for the appointment of three appraisers, whose duty it shall be to determine the damage sustained by said railway company by the use and occupancy of such site for such public warehouse; such appraisers shall be freeholders of the county wherein such site is located, and shall not be interested in a like question. The appraisers shall be duly sworn to perform their duties impartially and justly; they shall inspect the said location and consider the injury which said railway company will sustain by the erection of said warehouse upon the said site and the occupancy thereof, and shall assess the damage which such company will sustain by the occupancy of said site for such public warehouse purposes, and they shall forthwith make report, in writing, to the clerk of such court setting forth the description boundaries and amount of damages to such right of way which they assess, to said applicant, which report must be filed and recorded by the clerk, and a certified copy thereof may be transmitted to the register of deeds of the county where the site is situated, to be by him filed and recorded, without further proof or acknowledgment, and in the same manner and with the same force and effect as provided for the record of deeds. *Id.* sec. 271.

#### **Payment of damages, how tendered :**

The applicant for such public warehouse site may thereupon pay or tender the payment of the damages so assessed by depositing the same with the clerk of said court for the benefit of said railway company, and thereupon and thereafter may proceed to erect a public warehouse upon the site so selected and condemned as hereinbefore provided and to occupy the same. The right of occupancy only being vested in said applicant or his or their heirs and assigns. *Id.* sec. 272.

#### **Appeal may be taken :**

That either party may appeal to the circuit court from the assessment of the said appraisers within thirty days after the said report it filed with the clerk of the court as hereinbefore provided, and the trial of such appeal shall be conducted in all things as a trial of a civil action in such court, but if the appellant does not recover a verdict more favorable to said appellant than the assessment of the appraisers, he shall not recover

costs in the circuit court, and all cost of said appeal shall be taxed against said appellant. Such appeal shall not interfere with the right of the applicant to occupy such site and to erect a public warehouse thereon, but such railway company shall have a first lien upon any building so erected for any increase of damages recovered in the circuit court, together with the costs incident thereto. *Id.* sec. 273.

#### **Pay of appraisers :**

Each of the appraisers shall be entitled to a fee of one dollar and to ten cents for each mile necessarily traveled in making such appraisal. *Id.* sec. 274.

#### **Costs to be paid by applicant :**

All costs incident to the appointment of appraisers and to the appraisal of damages provided for herein shall be paid by the applicant for said public warehouse site. *Id.* sec. 275.

#### **Facilities for shipping :**

That upon the application of any person or firm owning or occupying any public warehouse, or any mill adjacent to the right of way of any railway company, such person or firm shall be granted the same facilities for shipping that are granted any other shipper at the same place. *Id.* sec. 276.

#### **Fraudulent bill of lading :**

Every person being the master, owner or agent of any vessel or officer or agent of any railroad, express or transportation company, or otherwise being or representing any carrier who delivers any bill of lading, receipt or other voucher, or by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express or transportation company or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 8130.

#### **Fraudulent warehouse receipts :**

Every person carrying on the business of a warehouseman,

wharfinger or other depositary of property, who issues any receipt, bill of lading or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 8131.

#### **When not liable:**

No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue. *Id.* sec. 8132.

#### **Duplicate receipts or vouchers :**

Every person mentioned in sections sixty-eight hundred and sixty-six and sixty-eight hundred and sixty-seven [§§ 8130, 8131] who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncancelled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 8133.

#### **Selling goods without consent of holder of bill of lading :**

Every person mentioned in section sixty-eight hundred and sixty-six and sixty-eight hundred and sixty-seven [§§ 8130, 8131], who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment

in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars or both. *Id.* sec. 8134.

**Bill of lading must be cancelled, when :**

Every person, such as mentioned in section sixty-eight hundred and sixty-seven [§ 8131], who delivers to another any merchandise for which any bill of lading, receipt or voucher has been issued, unless such receipt or voucher bore upon its face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be cancelled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. *Id.* sec. 8135.

**When law does not apply :**

The last two sections do not apply where property is demanded by virtue of process of law. *Id.* sec. 8136.

## DECISIONS AFFECTING WAREHOUSEMEN.

## B.

*Demand—Case when unnecessary—Warehouse closed.*

The plaintiff bank was the pledgee of a warehouse receipt deposited with it as collateral security for the payment of a note. At the time of the maturity of the note, the elevator or warehouse was closed and there was no person in charge on whom demand could be made, nor was it shown that the defendant had any other elevator or warehouse in the state at which demand could be made, and of which the plaintiff had knowledge. It was *held* that it was not necessary for the plaintiff to show any other or further effort to make demand. *Citizens' National Bank v. Great Western Elevator Co.*, 13 S. D. 1.

*Right of stoppage in transitu—After goods stored in warehouse.*

The right of stoppage in transitu may continue to exist even though the goods have been stored in a warehouse. In legal contemplation goods though stored may still be in transit, where they are stored by the carrier. *Powell v. McKechnie*, 3 Dak. 319.

## N.

*Pledge—Pledgee may maintain action in his own name.*

The pledgee of a warehouse receipt, under the statute of this state, may maintain an action for the conversion of the goods represented thereby. Such pledgee is entitled to maintain such action in his own name, accounting to the pledgor for any amount he may recover. *Citizens' National Bank v. Great Western Elevator Co.*, 13 S. D. 1.

## Q.

*Warehouse receipts—False—Estoppel—Measure of damages.*

The plaintiff, a *bona fide* holder of a warehouse receipt, brought an action against the corporation which had issued the same for the value of grain represented thereby. It appeared from the evidence that the defendant corporation at the time of issuing the receipt was operating numerous warehouses

within the state of South Dakota. The receipt was issued by an agent of the defendant when the grain which it represented was not actually in store. It was transferred by the agent to the plaintiff who took without any knowledge of fraud and he paid full value therefor in cash. It was *held* that the defendant was liable for the act of its agent in fraudulently issuing this receipt, and that the defendant was estopped to deny that it had actually received the grain represented thereby. Further *held*, that the plaintiff was entitled to recover not the value of the wheat, but that his claim was limited to the amount which he had paid for the warehouse receipt. *Fletcher v. Great Western Elevator Co.*, 12 S. D. 643; *Maynard v. Insurance Co.*, 34 Cal. 48.

## CHAPTER XLII.

## TENNESSEE.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Warehouseman :**

Hereafter, in this state, every and all person or persons, firms, companies or corporations who shall receive cotton, tobacco, corn, wheat, rye, oats, hemp, whiskey, or any kind of produce, wares, merchandise, or any description of personal property in store, for hire, or who shall undertake to receive, and take care of, or to sell the same for other persons, shall be deemed and taken to be a warehouseman. Milliken & Vertree's Code of Tennessee, 1884, sec. 2792.

**Warehouse receipt not to be issued until produce is delivered :**

No warehouseman shall issue a receipt for cotton, tobacco, grain, hemp, whiskey, or any kind of produce, wares, merchandise, or any description of personal property, unless such produce or personal property be in the custody of such warehouseman, and in store, or upon the premises and under his control at the time of issuing such receipt. *Id.* sec. 2793.

**Duplicate receipts to be so marked :**

No warehouseman shall issue any second or duplicate receipt while any former receipt for the same produce, or other personal property, or any part thereof, shall remain outstanding or uncancelled without writing or stamping plainly across the face of the same the word "duplicate." *Id.* sec. 2794.

**Shall hold produce or proceeds subject to receipt :**

No warehouseman shall sell or incumber, ship, transfer or in any way remove, or permit to be removed, transferred or shipped beyond his control anything hereinbefore mentioned, for which a receipt shall have been given by him until the receipt for the same be surrendered to and cancelled by him. *Id.* sec. 2795.

**Warehouse receipts made negotiable :**

All receipts issued by any warehouseman for cotton, tobacco, grain, hemp, whiskey or any kind of produce, wares, merchandise or any description of personal property, shall be and they are hereby made negotiable by written indorsements thereon and delivery in the same manner and to the same intent as bills of exchange and promissory notes, and any person or persons to whom the same may be transferred *bona fide*, and for value received, shall be deemed and taken to be absolute owner of the produce, wares, merchandise or other personal property therein specified, and no clause, condition or limitation, either written or printed, in said receipt shall be held to limit their negotiability or to affect the right of the holder or holders thereof. *Id.* sec. 2796.

**Non-negotiable receipts :**

But all such receipts which shall have the words "not negotiable" plainly written or stamped thereon shall not be subject to the provisions of this chapter. *Id.* sec. 2797.

**Hypothecations exceeding actual advances forbidden :**

No warehouseman shall pledge, hypothecate, or negotiate any loan upon any receipt for produce, merchandise or other personal property to a greater amount than he has actually paid or advanced thereon. *Id.* sec. 2798.

**Punishments and penalties :**

Any warehouseman who shall violate any of the provisions of this chapter shall be deemed guilty of a criminal offense, and, upon indictment and conviction thereof, shall be fined in any sum not exceeding five thousand dollars, or shall be punished by imprisonment in the penitentiary of the state for not more than five years, or both, in the discretion of the jury trying the case; and every and all person or persons aggrieved by the violation aforesaid, shall have the right to maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this chapter, to recover damages which he or they may have sustained by reason of such violation as aforesaid, before any court of competent jurisdiction whether such person or persons aforesaid shall have been convicted of a criminal offense under this chapter or not. *Id.* sec. 2799.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Demand necessary.*

In an ordinary case of bailment no action would lie for the conversion of the deposit until there has been a demand and a refusal, but where a debt is created by the transaction, payable on demand, the institution of the suit is a sufficient demand. See sec. 1947, Code; *Moore v. Fitzpatrick*, 7 Bax. 350; *Bryant v. Puckett*, 3 Hay, 252.

*Same—Parting with property.*

Bailees generally cannot part with possession of property without the consent of the owner, and the delivery of property without such consent should be treated as a conversion. *Colyar, Trustee, etc., v. Taylor*, 1 Cold. 372; *Mariner v. Smith*, 5 Heisk. 203.

*Same—Liability of bailee may be affected by usage.*

If a usage of trade qualified the bailee's liability, testimony will be received to prove such usage. *Kelton v. Taylor & Co.*, 11 Lea, 264.

## B.

*Ordinary care—General rule.*

Ordinary care defined to be that care and diligence which good and capable warehousemen are accustomed to show under similar circumstances or that which business men, experienced and faithful in their particular department, are accustomed to exercise when in the discharge of their duties. The warehouse must be a suitable building but it need not be fireproof, and the building must be watched in a manner proportional to the risk which the warehouseman assumes. *Lancaster Mills v. Merchants' Cotton-Press Co. et al.*, 89 Tenn. 1; *Waller v. Parker*, 5 Cold. 466; *Deming & Co. v. Merchants' Cotton-Press, etc., Co.*, 90 Tenn. 306; *Kelton v. Taylor & Co.*, 11 Lea, 264; *Kirtland v. Montgomery*, 1 Swan, 452; *Polk v. Kirtland et al.*, 9 Heisk. 292; *Wallace v. Canady*, 4 Sneed, 364.

*Same—How contract between warehouseman and depositor ascertained.*

The proper manner of ascertaining the contract existing be-

tween the depositor and a warehouseman is not alone from an examination of dray tickets, but the relations of the two must be considered as well as former transactions, and the custom existing between the parties. *Lancaster Mills v. Merchants' Cotton-Press Co. et al.*, 89 Tenn. 1.

*Title—Parol reservations as to—When valid.*

A warehouseman advancing money to a customer to purchase produce to be shipped to him and sold on the customer's account, may validly stipulate by *parol* that the title to the property thus purchased shall vest and remain in him as security for the money advanced, although its possession passes temporarily to the customer for preparation and shipment; and upon the title thus reserved the warehouseman can maintain replevin against the customer, his administrators or creditors for such property thus purchased, as can be identified. *Grange Warehouse Assoc. v. Owen*, 86 Tenn. 355.

*Attachment of goods while bailed—Owner cannot maintain trover.*

Where property was attached while in the hands of the bailee the owner thereof cannot maintain trover against the officer having possession of the property under such attachment for the reason that the plaintiff in trover must establish his right of possession as well as his right of property, and that right must exist at the time of the conversion. *Caldwell v. Cowan*, 9 Yer. 261.

**E.**

*Factors—May pledge goods to secure their interest—When they may refuse to comply with order to sell.*

Factors who have made advances upon goods intrusted with them may pledge the same to the extent of their interest therein. If such a factor be instructed by the owner to sell the goods he may refuse to do so if the goods would not sell for a sufficient amount to reimburse him for his advances. *Blair & Jefferson v. Childs*, 10 Heisk. 199.

**H.**

*Storage charges—When not recoverable.*

Storage charges cannot be recovered when the holding of

depositor does not inure to the benefit of the true owner. *Hamilton & Co. v. Kennedy et al.*, 62 Tenn. 476.

## L.

*Replevin—Demand not necessary.*

In order to maintain an action of replevin, it is not necessary to show a demand on the part of the plaintiff, for the property in controversy, before bringing his suit. *Draper v. Moseley et al.*, 3 Bax. 201.

*Detinue—Demand necessary.*

A defendant to whom property has been bailed by the apparent owner cannot be sued in an action of detinue for the property by the true owner, unless a demand for the property had been made previous to the institution of the suit. *Hunter v. Servier*, 7 Yer. 127.

## N.

*Loss by fire—Warehouseman not liable unless the fire results from his negligence—Burden of proof.*

A warehouse and contents were completely destroyed by fire. In an action against the warehouseman the jury found that he had exercised ordinary care in all respects save that he had failed to keep closed a part of one side of his warehouse below the floor; further, the jury was unable to find that the destruction of the warehouse resulted from this defect or was in any way connected therewith, and, in fact, was unable to ascertain the cause of the fire. It was held that under the above stated facts the warehouseman was not liable, the court holding that the burden of proof was upon the complainant to show that the fire was a result of the defendant's negligence. It must show that the negligence of the defendant was the proximate cause of the loss. *Lancaster Mills v. Merchants' Cotton-Press Co. et al.*, 89 Tenn. 1; *Ry. Co. v. Manchester Mills*, 88 Tenn. 653.

*Same—When statement of warehouseman that goods are not in his possession amounts to negligence—Proximate cause.*

A carrier which had received goods and had stored them in its depot informed the consignee on several occasions when he called for the goods that they had not been received. The

goods were destroyed by fire which consumed the depot and its contents. *Held* that the carrier was liable as a warehouseman; that the failure of the carrier's servants to deliver the goods when they were actually in store, and his ignorance in not knowing of their receipt, constituted negligence, and that this mistake on the part of the carrier's servants was the proximate cause of the loss. *Railroad v. Kelly*, 91 Tenn. 699; *Butler v. Railroad*, 8 Lea, 32; *Kremer v. Express Co.*, 6 Cold. 360.

*Loss by act of war—When bailee not liable—Instructions to jury.*

A bailee of goods is not liable for their loss if he can show that the goods were taken out of his possession or from under his control by irresistible military authority. Therefore, a charge to the jury in a suit against a warehouseman for the value of goods intrusted to his care, to the effect that if they were satisfied from the evidence that the goods were burned, *or directed to be burned*, by the military authority of the Confederate States against his consent that they were to find for the defendant, was erroneous. Although such charge was not excepted to at the trial the appellate court sent the case back for a new trial on the ground that this instruction constituted an actual error which tended to mislead the jury on a material question in the case. *Weakley v. Pearce et al.*, 5 Heisk. 401.

**P.**

*Contracts to keep insured—When they do not constitute the warehouseman an insurer.*

A cotton-press company had a contract with a common carrier that it would insure in solvent companies all cotton which it received from the carrier. Under such an arrangement it was *held* that in view of the fact that the goods, which were only partly insured and subsequently destroyed by fire, did not belong to the carrier, that it was a mere voluntary imposition of an obligation of insurance incidentally beneficial to the owners of the cotton, and that it was not in law or reason the same thing as the assumption of an obligation of insurance. In this case the loss occurred without negligence. It was further *held* that although the failure of the cotton-press company to carry such insurance might result in incidental damage to the owners of the cotton, the carrier would not be liable for its

loss unless it could be shown that the carrier was under some obligation to the owners to insure or that the cotton-press company should insure. There was no privity between the carrier and the owners with respect to insurance. The contract bound the cotton-press company *itself*; it was to insure the cotton and not merely the carrier's responsibility therefor; thus such insurance would incidentally inure to the benefit of the owners but this afforded no reason whatever for holding the carrier liable to the owners for the failure of the cotton-press company to fully carry out its obligation with the carrier in respect of insurance. *Lancaster Mills v. Merchants' Cotton-Press Co. et al.*, 89 Tenn. 1.

*Same—Same—Liability for breach of contract—Recovery by owner from other policies a bar.*

A warehouseman contracted with a carrier that the goods stored with him would be fully covered by insurance for the benefit of the latter. After loss it appeared that the owners had previously insured the property in their own names and had collected the amount of such policies, the receipt therefor being given as for money "borrowed and received." It was held that this contract did not constitute the warehouseman an insurer of the goods but that the owners might recover from him such amount as they could prove they lost as a result of the failure of the defendant to comply with the terms of his contract. If the defendant could show that the complainant had received the full value of the goods destroyed under its policy of insurance he could not recover against the warehouseman for he had not been damaged by the defendant's breach of contract. *Lancaster Mills v. Merchants' Cotton-Press Co. et al.*, 89 Tenn. 1. *Deming & Co. v. Merchants' Cotton-Press, etc., Co.*, 90 Tenn. 306.

#### Q.

*Warehouse receipt—What is not.*

A receipt signed jointly by the proprietor of a bonded warehouse and the government storekeeper, and issued to the purchaser of whiskey on storage in the warehouse and providing for delivery of the same upon the return and surrender of the receipt, properly indorsed, and payment of government tax and storage charges, is not a technical warehouse receipt within

the meaning of the statute on that subject and does not possess the attributes conferred by the statute, although it recites that it "is given in deference to the Tennessee warehouse laws." *Marks & Co. v. Bridges & Son*, 106 Tenn. 540.

*Same—Innocent holder of bonded warehouse receipt.*

The holder of a government bonded warehouse receipt, except he be an innocent holder for value, cannot maintain an action against the proprietor of the bonded warehouse for conversion of the whiskey therein described where the latter has, by appropriate legal proceedings, subjected it to public sale for the purchase price and become the purchaser thereof at such sale. *Id.*

*Same—A contract—Estoppel.*

As between the makers of a warehouse receipt and an assignee thereof in good faith it is not simply a receipt subject to be explained and contradicted by parol, but it is a contract subject to the rules applicable to other contracts. In an action on a warehouse receipt a warehouseman will be estopped to show by parol that he did not actually receive the goods. *Stewart Gwynne & Co. v. Phoenix Ins. Co.*, 9 Lea, 104.

*Same—Negotiability—Bona fide owner protected.*

A *bona fide* owner of warehouse receipts even though the description of the goods is somewhat vague takes title to the property thereby as against an attaching creditor who seizes the goods while stored. *Bank of Rome v. Haselton*, 15 Lea, 216.

**R.**

*Bill of lading—Exemptions.*

A stipulation in the bill of lading that the carrier shall not be liable for destruction of the goods by fire while the goods are in its depot, station, yard, landing or warehouse, is valid, provided there is sufficient consideration therefor, and further provided, that it is in no sense a stipulation against the liability of the carrier for its negligent acts. *Lancaster Mills v. Merchants' Cotton-Press Co. et al.*, 89 Tenn., 1; *Railroad Co. v. Craig*, 102 Tenn. 298.

*Same—Same—Negligence—Effect of acceptance.*

A common carrier may by general stipulations, based on sufficient consideration, limit his liabilities, except such as grow out of his negligence or bad faith, and such limitations may be embodied in the bill of lading which represents the goods. There is a natural presumption when one accepts a bill of lading that he is acquainted with the contents thereof. *Dillard Bros. v. L. & N. R. R. Co.*, 2 Lea, 288; *E. T., Va. & Ga. R. R. Co. v. Brumley*, 5 Lea, 401; *Merchants' Dispatch Transportation Co. v. Bloch Bros.*, 2 Pickle, 392.

*Same—Same—To be strictly construed.*

Exemptions contained in a bill of lading are limitations upon the common-law liability of the carrier and are not favored by the courts. They are to be strictly construed and limited to the general risk of the carrier after it obtains the custody of the property, unless the terms thereof expressly extend to a special risk. *Deming & Co. v. Merchants' Cotton-Press, etc., Co.*, 90 Tenn. 306.

*Same—Same—As to measure of damage—Conversion.*

The ordinary measure of damages, to wit, the market value of goods at place of destination, less freights, applies to a case where carrier has been guilty of conversion, although bill of lading contains stipulation that the carrier, in case of loss, shall be liable only for the value of the goods at time and place of shipment. *Erie Dispatch v. Johnson & Guinee*, 87 Tenn. 490.

*Same—Effect of transfer.*

A transfer and delivery of a bill of lading vests the property in the transferee, this being regarded in law as a constructive delivery of the property itself. *Ochs et al., Burger & Seibel v. Price et al.*, 6 Heisk. 483.

*Same—Same—Possession of bill of lading before delivery—Attachment.*

Factors received a bill of lading for cotton which was shipped to them by the owner. When the cotton was on the wharf but before the factor had taken possession thereof it was attached by a creditor of the owner. It was held that the title of the

cotton was still in the consignor and that the possession of the bill of lading in this case was not a possession of the cotton itself. It only gave authority to the factor to reduce the cotton to possession. *Saunders v. Bartlett, Gould & Heath*, 12 Heisk, 316; *Oliver et al. v. Moore & Co.*, 12 Heisk, 482; *Woodruff v. N. & C. R. R. Co.*, 2 Head, 87.

## U.

*Warehouse act constitutional—Does not embody more than one subject.*

The act of 1879 known as the Warehouse Act does not violate sec. 17, art. 2 of the constitution of the state of Tennessee in that it embodies more than one subject. Its title is "An act to define warehousemen, to regulate their duties, and to affix penalties for the violation thereof, and relating to their receipts." This act embodies but one subject and that is plainly expressed in its title. *Bank of Rome v. Haselton*, 15 Lea, 216; *Monell v. Fickle*, 3 Lea, 79.

## CHAPTER XLIII.

**TEXAS.****LAWS PERTAINING TO WAREHOUSEMEN.****Warehouses and warehousemen—Regulation of :**

That all persons, firms, companies or corporations who shall receive cotton, tobacco, wheat, rye, oats, rice, whiskey, oil, or any kind of produce, wares, merchandise, or any description of personal property in store for hire, under the provisions of this act, shall be deemed and taken to be public warehousemen and all warehouses which shall be owned or controlled, conducted and managed in accordance with the provisions of this act shall be deemed and taken to be public warehouses; provided, that a public warehouse for the storage of cotton may, within the meaning of this act, include a lot or parcel of land enclosed with a lawful fence, the gate or entrances of which shall be kept securely locked at night. Supplement to Sayle's Civil Statutes, 1902, title 108a, sec. 1.

That the owner, proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such public warehouse, shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the state of Texas, which certificate shall be issued by said clerk upon a written application, setting forth the location and name of such warehouse or warehouses, and the name of each person, individual, or a member of the firm interested as owner or principal in the management of the same; or if the warehouse is owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated, which application shall be received and filed by such clerk and preserved in his office, and the said certificate shall give authority to carry on and conduct the business of a public warehouse within the meaning of this act, and shall be re-

vocable only by the district court of the county in which the warehouse or warehouses are situated, upon a proceeding before the court, on complaint by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof, as in other civil cases. The person receiving a certificate, as herein provided for, shall file with the county clerk granting same, a bond payable to the state of Texas, with good and sufficient surety, to be approved by said clerk, in the penal sum of five thousand dollars (\$5,000), conditioned for the faithful performance of his duty as a public warehouseman, which said bond shall be filed and preserved in the office of said clerk. *Id.* sec. 2.

That on application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto, which receipt shall purport to be issued by a public warehouse, shall have date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored, and the date on which it was originally received in warehouse; and that it is deliverable upon the return of the receipt properly indorsed by the person to whose order it was issued, and on payment of all charges for storage. All such receipts shall be numbered consecutively, in the order of their issue, and when such receipt is for cotton, the receipt shall state whether the cotton therein described is exposed to the weather or is under shelter; and a correct record of such receipts shall be kept in a well bound book which shall be, at all reasonable hours, open to examination by any interested person, and no two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipt be issued, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face " Duplicate"; and provided that no such duplicate receipt shall be issued by the public warehouseman, until adequate security acceptable to the warehouseman, be deposited with or to the order of said warehouseman, to protect the party or parties who may finally hold the original receipt in good faith and for a valuable consideration. *Id.* sec. 3.

That no public warehouse receipt shall be issued except upon the actual previous delivery of the goods into the public warehouse or on the premises and under the control of the public warehousemen by whom it purports to be issued, and the name of the warehouse shall invariably be specified in such receipt. *Id.* sec. 4.

That on the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman who shall issue a receipt for goods shall under any circumstances or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued, until the said receipt shall have been surrendered and cancelled, except in case of lost receipts, as provided for in section 3 hereof, and in default of the strict compliance with the provisions of this section of this act, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall, furthermore, be liable to the special penalty herein provided. Upon the delivery of the goods from the warehouse upon any receipt, such receipt shall be plainly marked in ink across its face with the word "cancelled," with the name of the person cancelling the same, and shall thereafter be void, and shall not again be put in circulation. *Id.* sec. 5.

That no public warehouseman shall insert in the public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws of this state, excepting "not accountable for leakage or depreciation" or words of like import or meaning. *Id.* sec. 6.

That the receipt issued against property stored in public warehouses, as herein provided for, shall be negotiable and transferable by indorsement in blank or by special indorsement, and delivery in the same manner and to the same extent, as bills of exchange and promissory notes now are, without other formality, and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the prop-

erty therein described subject only to the lien and privilege of the public warehouseman for storage and other warehouse charges; provided, however, that all such public warehouse receipts, as shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this section; and provided, further, that no public warehouseman shall issue warehouse receipts against his own property in his own warehouse, but upon sale of such property in good faith, may issue to the purchaser his public warehouse receipt in form and manner as herein provided; which issue and delivery of the receipt shall be deemed to complete the sale and constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of said receipt for his own goods in his own public warehouse from complying with and being subject in all respects, to all other sections and provisions of this act. *Id.* sec. 7.

That any public warehouseman who violates any of the provisions of this act shall be deemed guilty of criminal offense, and upon indictment and conviction thereof shall be punished by fine in any sum not exceeding five thousand dollars, or imprisonment in the state penitentiary not exceeding two years, or by both such fine and imprisonment. And every and all persons aggrieved by the violation aforesaid, shall have the right to maintain an action against the person or persons, corporation or corporations, so violating any of the provisions of this act, for the recovery of damages which he or they may have sustained by reason of such violation aforesaid, before any court of competent jurisdiction, whether such person or persons so violating shall have been convicted of criminal offense under the act or not. *Id.* sec. 8.

That nothing in this act shall be construed to apply to private warehouses or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws, provided, that such private warehouse receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued, from a public warehouse, but shall, on the contrary, bear on its face in large characters, the words, "Not a public warehouse receipt." *Id.* sec. 9.

**Tax on grain elevators :**

From each owner or manager of every grain elevator doing business for fees or toll with a capacity of over one hundred thousand bushels, fifty dollars; on each owner or manager of every elevator with a capacity of fifty thousand bushels and not over one hundred thousand bushels, twenty-five dollars. Art. 5049, subd. 55, Sayle's Texas Civil Statutes, 1897.

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NOTE. Corporations may be formed to construct, purchase and maintain warehouses, elevators, mills, etc., under the provisions of title 21 of Sayle's Texas Civil Statutes, 1897.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Owner may sue bailee although not a party to the bailment.*

It is settled in this state, that the owner of property held by a bailee may sue to recover it from him, though not a party to the contract of bailment. *Clay & Browne v. Gage & Wood*, 1 C. A. 661.

*Same—Bailee taking with notice of claim—Subject thereto.*

Where one buys property or receives it as bailee with notice of a claim of title by another, adverse to his vendor or bailor, he takes and holds subject to the rights of the adverse claimant, though ostensible title may have been in his vendor or bailor. *McAnelly v. Chapman*, 18 Tex. 198; *Luckett v. Townsend*, 3 Tex. 119.

*Same—Same—Conversion.*

Where a bailee has knowledge of a claim of title by another adverse to his bailor, and by direction of his bailor carries off the property, he becomes responsible to such adverse claimant for the value of the property if the latter proves to be the rightful owner, whether the suit by which such right is established is then or thereafter brought. *McAnelly v. Chapman*, 18 Tex. 198.

*Same—Limiting liability.*

Baillees may by contract limit their liability provided such limitation is not contrary to public policy. *Coffield v. Harris*, 2 App. Cas. sec. 316.

*Same—Execution upon property in hands of factor.*

Property which has been delivered to a factor for shipment, and upon which the factor has made advances, may nevertheless be taken in execution by a creditor of the owner, subject to the advances which have been made. *Joost v. Scott*, 19 Tex. 473.

*Same—When statute of limitations begins to run.*

Where there was a bailment for hire to be terminated when demand made for thing bailed, *held* that in the absence of demand the statute began to run upon the death of the bailor. *Wingate v. Wingate*, 11 Tex. 430; *Hunter et al. v. Hubbard*, 26 Tex. 537.

## B.

*Ordinary care.*

The liability of a warehouseman for the protection of goods intrusted to him extends only to the exercise of ordinary care. *T. & P. Ry. Co. v. Schneider & Davis*, 1 App. Cas. sec. 118; *Same v. Morse*, 1 App. Cas. sec. 412; *Same v. Wever*, 3 App. Cas. sec. 60; *Coffield v. Harris*, 2 App. Cas. sec. 315.

*Delivery—To bailor after notice of real owner's claim—Conversion—Rule stated.*

“ If the bailee have the temporary possession of the property, holding the same as the property of the bailor, and asserting no title in himself, and in good faith, in fulfillment of the terms of the bailment, as expressed by the parties or implied by law, restore the property to the bailor before he is notified that the true owner will look to him for it, no action will lie against him for he has only done his duty.” If delivery be made to the bailor after notice of owner's claim, it will constitute a conversion. In case of demand by one other than bailor, the bailee has a reasonable time in which to ascertain who is the owner of the property. A failure to deliver to the true owner will not constitute a conversion until after the expiration of a reasonable time from time of demand. *Roberts v. Yarboro*, 41 Tex. 449; *Nelson v. Iverson*, 17 Ala. 216; *Horseley v. Moss & Pennington*, 5 Tex. C. A. 341.

*Conversion—Delivery after notice of adverse interest in property stored—Public ginners.*

The plaintiff sued the defendant for the conversion of one half interest in certain cotton which had been sent to the latter to be ginned. It appeared that the plaintiff was the owner of a certain plot of ground and that he contracted with the lessee that one half of all the cotton produced by him on such ground was to belong to the plaintiff. After the cotton reached the

defendants' gin the plaintiff notified them of his claim and instructed them not to deliver the cotton without his order. Subsequently the defendants delivered the cotton to the lessee contrary to the instructions of the plaintiff. It was *held* that this action on the part of the defendants constituted a conversion of the plaintiff's interest in the cotton stored. It was further *held* that the plaintiff had something more than a landlord's lien on the crops; he had a specific interest in the crops themselves, it appearing that the plaintiff furnished not only the land but also tools, implements and the necessary teams. That, therefore, the landlord and tenant act did not apply for it was not intended by the legislature, by this act, to take away the rights of parties to make any contract they might deem proper in regard to the ownership of crops raised or any other matter concerning the same. *Horsely v. Moss & Pennington*, 5 Tex. C. A. 341.

#### M.

*Pledge—Agreement—Right to sell—Pledgee need not wait for most favorable market.*

If the agreement by which a pledge is made fails to provide that the pledgee may sell the property deposited, the pledgee has the right to sell the same after default, demand made and notice given. By agreement parties may contract and regulate in advance the remedy which the creditor must pursue in subjecting the property pledged to the payment of the debt; further, such an agreement may contain a valid provision to the effect that no notice need be given after default and that sale may be either at auction or privately. In the absence of such agreement as to notice, the pledgee must give a reasonable notice of the time, place and manner of sale. The pledgee is not obliged to wait until the most favorable market may be secured for the sale of the property. *King & Co. v. T. B. & Ins. Co.*, 58 Tex. 669.

#### N.

*Loss by fire—When warehousemen liable.*

Where goods in storage have been destroyed by fire the warehouseman is liable for the resulting loss if he were guilty of negligence, indifference or imprudence. *Vincent v. Rather*, 31 Tex. 77.

*Same--Extent of warehouseman's liability.*

A warehouseman is only responsible for the loss of goods destroyed by fire in his warehouse, when it can be shown that the loss was due to the negligence or lack of ordinary care on the part of the warehouseman or his servants. *Texas & P. Ry. Co. v. Weaver*, 3 App. Cas. sec. 61; *M. P. Ry. Co. v. Douglas & Sons*, 2 App. Cas. sec. 30.

*Same--Evidence to prove negligence.*

Where it appeared that cotton was packed near the old tracks of a railroad, that an engine ran by at a high rate of speed emitting a large quantity of sparks, *held* these facts were sufficient to show negligence on the part of the railroad. *Texas & Pac. Ry. Co. v. Weaver*, 3 App. Cas. sec. 61.

*Same--Same--Burden of proof on plaintiff.*

The burden of showing that a fire which resulted in the loss of plaintiff's goods was caused by the negligence of the defendant, a warehouseman, is upon the plaintiff. *T. & P. Ry. Co. v. Capps*, 2 App. Cas. sec. 36.

**P.***Advertising "Fireproof" warehouse--Storage in another warehouse not fireproof not due care--Mistake--Custom.*

The owner of cotton shipped the same by railroad to the defendant for storage and sale. Through an error the cotton was received at another warehouse. Such other warehouseman recognized the defendant as the consignee and real factor. The defendant thereupon sent to the owner his warehouse receipt in which it was stated that the cotton was stored in his own warehouse, and a letter accompanied the same which explained the circumstances. It appeared that the warehouse in which the cotton was actually stored was not fireproof and further that the defendant's warehouse was fireproof and that he had advertised this fact. There was also evidence to show that it was probable that the owner knew that the defendant's warehouse was fireproof and that it constituted an inducement for him to have his cotton stored therein. Shortly after its storage the cotton and warehouse were destroyed by fire. It was *held* that the owner of the cotton had the right to have

the same stored in any warehouse which he might select, that it was the duty of the defendant to use due diligence and every reasonable precaution to protect and preserve the cotton and his allowing the cotton to remain stored in a warehouse which was shown to be of very inferior construction to that of his own did not constitute such diligence and precaution; that this liability could not be overcome by evidence of a usage in the city that where cotton was deposited in the wrong warehouse through a mistake it was the custom of warehousemen to allow it to remain there. *Vincent v. Rather*, 31 Tex. 77.

**Q.**

*Warehouse receipt--Not a "Negotiable instrument"--Bona fide holder--Lost receipt--Indemnity not required.*

Warehouse receipts which are in form payable to bearer are not negotiable in the sense of bills and notes under the law merchant. Even though one obtain possession of a warehouse receipt in a manner which would constitute him a *bona fide* holder of a negotiable instrument, nevertheless he cannot recover on such a receipt if the owner of the property represented thereby has not parted with the title. It is well settled that the title to personal property cannot be derived from one who has found it or stolen it from the owner; therefore, to hold that warehouse receipts pass title to the property they represent, in the same manner as negotiable instruments pass title to money, would be in effect to place the symbol upon a better footing than the thing represented. The reason for the rule therefore, which requires indemnity from the loser of a negotiable instrument as a condition precedent to recover does not exist in the case of a lost warehouse receipt. *Clay & Browne v. Gage & Wood*, 1 C. A. 661.

*Same--Transfer of, a symbolic delivery of property.*

The transfer and delivery of a warehouse receipt to a purchaser or pledgee is a symbolical delivery of the property represented thereby. *Freidman, Keiler & Co. v. Peter et al.*, 18 Tex. C. A. 11.

**R.**

*Bill of lading--Only indicates prima facie ownership in consignee.*

A bill of lading evidences *prima facie* ownership of the

goods in transit in the consignee. Evidence may be given to show that the consignor is still the owner of the property. *Craig & Ogden v. Marx & Kempner*, 65 Tex. 649.

*Same—Effect of transfer—Not “negotiable instruments.”*

The transfer of a bill of lading can give no higher title to the transferee than would a delivery of the property to him. Where bills of lading are made negotiable by statute the holder, in the absence of either title to the goods or authority to transfer them, cannot, by a transfer of the instrument, pass the right of property in the goods, even though a *bona fide* purchaser for value; he can convey no greater rights than he himself has. *Lands v. Lattin Bros.*, 19 Tex. C. A. 246; *Freeman et al. v. Bank of Commerce*, 3 App. Cas. see. 340; *Shaw v. Railway Co.*, 101 U. S. 557.

T.

*Liability for injury--Heavy boxes improperly packed.*

The plaintiff, a drayman, called at the warehouse of the defendant for certain boxes belonging to his employer. Upon arriving at the warehouse, he went inside in order to ascertain which boxes he was to remove. Upon placing his hand upon one of the boxes for the purpose of identifying it, it toppled over causing him severe injuries. An instruction to the jury that if they found that the boxes had been negligently piled one upon the other and that if such negligence resulted in the injury to the plaintiff that they were to find for him, was held to be a correct instruction. *Mallory & Co. v. Smith*, 76 Tex. 262.

## CHAPTER XLIV.

**UTAH.**

## LAWS PERTAINING TO WAREHOUSEMEN.

**Warehousemen :**

Every warehouseman or other person who shall safely keep or store any personal property at the request of the owner or person lawfully in possession thereof, shall in like manner have a lien upon all such property for his reasonable charges for the storage or keeping thereof, and for all reasonable and proper advances made thereon by him in accordance with the usage and custom of warehousemen. Revised Statutes of Utah, 1898, sec. 1403.

**Embezzlement defined :**

Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted. *Id.* sec. 4374.

**Embezzlement by banker, trustee, etc. :**

Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement. *Id.* 4377.

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NOTE. It seems that there are, in Utah, no decisions affecting warehousemen as such.

## CHAPTER XLV.

## VERMONT.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Disposition of unclaimed property—Unclaimed for six months, owner or consignee to be notified :**

If personal property stored in a depot or other building of a railroad or steamboat corporation, or with a wharfinger, public storehousekeeper or express company, without a special contract for keeping the same, is not claimed by the owner or consignee within six months from the time it was so deposited, the persons or corporation with whom it is stored shall notify the owner or consignee by letter where the property is. If the owner or consignee is unknown, such persons or corporation at the expiration of such time may cause the property to be opened and examined by the sheriff of the county in which it remains; and if upon such examination the name and residence of the owner or consignee is ascertained, he shall be notified as aforesaid. Vermont Statutes, 1894, sec. 4859.

**If unknown and not claiming property, same to be sold :**

If such owner or consignee does not, within one month after such notice, claim such property, pay the charges thereon and take it away, or if the owner or consignee is not ascertained or his residence known, the property may be sold by the sheriff. *Id.* sec. 4860.

**Sale to be advertised three weeks :**

The sheriff shall sell such property at public auction, giving notice of such sale in a newspaper published in the town or county, three weeks successively, the last of which publications shall not be less than four weeks previous to such sale. Such advertisement shall state the time and place of sale, the place where and the time when the property was received, a descrip-

tion of the same, the marks upon the articles to be sold, the place whence sent, if known, and the name of the owner or consignee, if known. *Id.* sec. 4861.

#### **Duty of officer making sale :**

If the owner or consignee does not claim the property, and pay the legal charges thereon and for advertising the same, before the day of sale, the sheriff shall sell the same, and make a sworn return of the sale, with a list of the property sold and a copy of the advertisement describing such property, within twenty days after such sale, to the state treasurer. *Id.* sec. 4862.

#### **Proceeds—How disposed of:**

The sheriff shall also return to the state treasurer the papers, notes, drafts, moneys, or other valuables of similar nature, found with such property, which, with the moneys arising from the sale, after deducting the legal charges thereon, and the charges and expenses of the sale, shall be kept by said treasurer for the benefit of the owner or consignee of such property, and shall be paid to him on producing satisfactory evidence of his right. *Id.* sec. 4863.

#### **To vest in state after two years—Record :**

The state treasurer shall keep a record of the time when such moneys, notes, drafts, or other valuables, and the avails of such sales are received: and if the same remain in his office unclaimed by the owner or consignee thereof for two years, they shall become the property of the state, and shall be disposed of by the treasurer for the benefit of the state. *Id.* sec. 4884.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Special contract.*

A bailee may make a special contract with his bailor by which he will be absolutely liable for the goods; or he may restrict his common-law liability, provided such restrictions do not attempt to exempt him from loss or damage due to his negligence. *Ames & Co. v. Melendy*, 64 Vt. 554.

*Same—Power of sale—Personal trust.*

A bailment of property with the power of sale is a personal trust to the bailee which he cannot delegate. *Hunt v. Douglass*, 22 Vt. 128.

## B.

*Ordinary care.*

A warehouseman is bound only to use ordinary care and diligence in the safe-keeping of goods intrusted to him. *Blumenthal v. Bruinerd et al.*, 38 Vt. 402; *Gleason v. Estate of Beers*, 59 Vt. 581; *Briggs v. Taylor*, 28 Vt. 180.

*Same—No title in bailor.*

If a warehouseman receive goods, and the bailor has no title thereto, and such goods are taken from the custody of the warehouseman by the authority of the law, as the property of a third person, the warehouseman may show this in defense of an action brought against him by the bailor for the goods. *Burton and Ano. v. Wilkinson and Ano.*, 18 Vt. 186.

*Same—Sheriff breaking outer door.*

If the goods of the debtor are secreted in the warehouse of a third person, the sheriff will be justified in breaking open the outer door for the purpose of taking them by due process of law, if admittance is refused him, after he has demanded it from the proper person; and he may do this in the night as well as day. *Id. ; Fullam et al. v. Stearns*, 30 Vt. 443.

*Same—Action by, for trespass.*

Plaintiffs sued in trespass for the breaking and entering of

their warehouse by the defendants and the taking of certain goods therefrom. Defendants pleaded they took the goods by virtue of legal process. The plaintiffs replied that the goods were the property of A and not of the debtor. The defendants rejoined, setting forth that A had brought an action against them for the goods, and in a trial on the merits judgment had been given for defendants. *Held*, on demurrer to this rejoinder, that the matter was well pleaded, and that the defendants were entitled to judgment. *Burton and Ano. v. Wilkinson and Ano.*, 18 Vt. 186.

*Conversion—Wrongful sale.*

A wrongful sale of property by a bailee is a conversion thereof as to both the bailee and the purchaser. An action of trover will lie against both for such a conversion. *Buckmaster v. Mower & Ford*, 21 Vt. 204.

**L.**

*Trover—Will lie against bailee if property put to an improper use.*

If the bailee apply the thing bailed to a different use from that for which it was bailed, his interest is determined, and the bailor may sustain trover for the injury. *Swift v. Moseley*, 10 Vt. 208; *Buckmaster v. Mower & Ford*, 21 Vt. 204; *Alvord v. Davenport*, 43 Vt. 30.

*Same—Wrongful detention.*

An action of trover will lie against a bailee for the wrongful detention of property intrusted to him after failure to deliver on demand. *Doherty v. Madgett*, 58 Vt. 323.

**R.**

*Bill of lading—Exemptions—Conditions printed on the back thereof.*

In a case where there were exemptions and conditions printed on the back of a bill of lading, which were not referred to on the face thereof, and there was no evidence in the case to show that notice of these conditions had been brought to the attention of the shipper of the goods, it was *held* that as the face of the instrument imported an absolute and express undertaking

that evidence modifying this undertaking should come from the party apparently so bound. *Newell et al. v. Smith & Clark*, 49 Vt. 255.

*Same—Effect of transfer as collateral.*

The indorsement and transfer of a bill of lading, as collateral security for the payment of a draft, vests in the transferee title to the property represented by the bill of lading. *Tilden v. Minor et al.*, 45 Vt. 196; *Davis & Aubin v. Bradley & Co.*, 28 Vt. 118.

## CHAPTER XLVI.

## VIRGINIA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Transfer of receipts issued by licensed warehouses :**

Warehouse or other storage receipts, with the word "negotiable" plainly written or stamped on the face thereof, issued by any person keeping a licensed warehouse or other licensed place of storage in this state, for goods, wares, merchandise, cotton, grain, flour, tobacco, lumber, iron, or other commodity stored with such person, shall be transferable by indorsement and delivery, whether the property specified in such receipt be owned by the person issuing the same, or another: and any person to whom such receipt is so indorsed and delivered shall be deemed the owner of the property specified therein so far as may be necessary to give effect to any sale to such person, or to any pledge or lien for his benefit, created or secured by such transfer, whether the receipt and indorsement be admitted to record or not, subject however to storage and other charges of the person keeping such place of storage. Code of Virginia, 1887, sec. 1791.

**When receipts not to be issued—Duplicate receipts :**

No person shall issue any such warehouse or other storage receipt, unless the property therein mentioned shall be actually in store, or on his premises and under his control at the time of issuing such receipt, nor shall a second or duplicate receipt for any property be issued while a former receipt for such property, or any part thereof, is outstanding and uncancelled, without having written or stamped in plain letters, across the face of such second or duplicate receipt, the word "duplicate." *Id.* sec. 1792.

**Prohibition against sale, etc., of property for which receipt was issued, without its surrender :**

No person shall sell, incumber, transfer, deliver, remove, or

permit to be removed beyond his immediate control, except to enforce his lien for storage and other charges, any property for which a receipt has been given as aforesaid, without the surrender and cancellation of such receipt or the consent of the holder indorsed thereon, or, in case of any partial delivery, the indorsement of such delivery thereon. Nothing herein contained shall be so construed as to prohibit the *bona fide* delivery of the property to the person entitled thereto, if the receipt be lost or destroyed : *Provided*, that before such delivery is made, notice of such loss or destruction be inserted for two successive weeks in a newspaper published in the city or county where the place of storage is, or if there be no newspaper published in the county, the notice shall be posted for two successive weeks at the front door of the courthouse of such county, and proof of such publication or posting shall be filed with the person by whom the receipt was issued. Nor shall anything herein contained be so construed as to impose any liability on any depository for any property mentioned in any receipt as aforesaid taken from his possession by any legal process, but it shall be his duty, when such property is so taken from his possession, or any process affecting or relating thereto is served on him, forthwith to give notice of the fact, if practicable, to the holder of such receipt. *Id.* sec. 1793.

**Storage of property—A bailment—What receipt to state :**

Whenever any grain shall be delivered to any person for storage as provided in section seventeen hundred and ninety-one, such delivery shall in all cases be deemed a bailment and not a sale of the property, notwithstanding what is so delivered shall be mingled by the depositary with the grain of other persons. The grain so delivered, or any of like kind and grade substituted for it by the depositary, shall not be subject to any of the liabilities of said depositary whatever. In any receipt given for the storage of grain as aforesaid, it shall be sufficient to state the kind, grade and quantity of the grain so stored. *Id.* sec. 1794.

**Wrongful removal of property by warehouseman—Larceny  
—Penalty for other violations :**

If any warehouseman or other depositary, by whom a receipt has been given as aforesaid, wrongfully and fraudulently re-

move, or permit to be removed from its place of storage, the property mentioned in such receipt, or any part thereof, he shall be deemed guilty of larceny thereof. If such warehouseman, or other depositary, wrongfully and fraudulently violate any other provision of this chapter, he shall be fined not exceeding one thousand dollars, or, in the discretion of the jury, be confined in jail not exceeding three years. *Id.* sec. 1795.

#### **Forgery of receipts—Penalty :**

If any person wrongfully and fraudulently make or issue any paper purporting to be a storage receipt as aforesaid, or wrongfully and fraudulently alter any storage receipt, he shall be confined in the penitentiary not less than two nor more than ten years. *Id.* sec. 1796.

#### **Establishment of warehouses—Their discontinuance :**

Tobacco warehouses, which were public warehouses of the day before this Code takes effect (May 1, 1888) shall continue to be such ; and the several county and corporative courts may hereafter authorize the erection of tobacco warehouses, or may establish the same, as public warehouses, within their respective counties and corporations ; which said warehouses shall be constructed, or shall have been constructed, so as to keep safely, and guard against fire and weather as far as practicable, all tobacco stored therein, and shall be kept in good repair and at all times (Sunday excepted) be open for receiving, storing, selling, and devlivering tobacco : *Provided*, That the owner of any such warehouse shall have the right to discontinue the same as a public warehouse, after having published a notice of his intention to do so once a week for four successive weeks in some newspaper published in the county or corporation wherein such warehouse is situated, or if no newspaper be published therein, after having posted such notice at the front door of the courthouse of such county or corporation for four successive weeks. *Id.* sec. 1797.

#### **Samplers—Their appointment and term :**

For each such public warehouse there shall be two samplers of tobacco, who shall be appointed by the governor, by and with the advice and consent of the senate, for the term of four years, commencing on the first day of October succeeding

their appointment. They shall be appointed in January or February of the year eighteen hundred and ninety, and every fourth year thereafter, and the samplers in office when this code takes effect shall continue therein until the term for which they were appointed shall have expired by limitation. *Id.* sec. 1798.

#### **How vacancy filled :**

If a vacaney occur in the office of sampler during his term, the governor shall appoint another in his place to serve for such part of the term as shall not have expired. *Id.* sec. 1799.

#### **Qualification and bond :**

Every sampler shall, within sixty days after his appointment, qualify and give bond before the court of the county or corporation wherein the warehouse for which he is appointed is situated, in the penalty of ten thousand dollars. If he fails to qualify and give bond within the time prescribed his office shall be deemed vacant. Within thirty days after the execution of such bond, the clerk of the court in which it is given shall transmit a copy thereof to the auditor of public accounts, and if he fail to do so, he shall for such failure forfeit one hundred dollars. *Id.* sec. 1800.

#### **Deputy sampler :**

Any sampler may nominate to the governor a deputy, who shall be appointed by the governor, if approved by him. Such deputy, after taking the oath required of his principal, may perform any of the duties of his principal, whenever the principal is unable to perform the same ; and the principal and the sureties on his official bond shall be responsible for all the acts of his deputy as such. *Id.* sec. 1801.

#### **New samplers to give receipts to predecessors :**

New samplers, appointed at any such warehouse, shall give to those whom they succeed, a receipt, containing the numbers, marks, and gross tare and net weight, of every hogshead or cask of tobacco which shall be then at the warehouse. They shall be thereupon chargeable with the delivery of such hogsheads and casks of tobacco, but in no way accountable for any loss of weight or defect of quality of said tobacco, which may have occurred without their fault. *Id.* sec. 1802.

**Sampling, weighing and branding tobacco :**

The samplers shall uncase and break every hogshead, cask, tierce or box of tobacco brought to their respective warehouses to be sampled; weigh and sample it, and mark or brand the same, as "Virginia" or "Western," according to the facts; and also, with the name of the warehouse, the tare of the hogshead, cask, tierce, or box; the quantity of net tobacco therein, and the condition thereof. The net weight shall be ascertained by weighing the hogshead, cask, tierce or box before it is uncased, and deducting therefrom the weight of the empty hogshead, cask, tierce or box. The sample shall not exceed eight pounds weight, and shall belong to the buyer of the tobacco from whom it was taken. *Id.* sec. 1803.

**Sampler's receipts :**

The samplers shall thereupon, if required by the owner or his agent, give a receipt or note for every such hogshead, cask, tierce, or box in the following form, if the tobacco be good, sound, well-conditioned and merchantable :

" \_\_\_\_\_ Warehouse.  
" The \_\_\_\_\_ day of, \_\_\_\_\_ 18\_\_\_\_.

VIRGINIA TOBACCO.

Marks.	No.	Gross.	Tare.	Net.	
					Received of _____ hogsheads, etc., of tobacco, marks, numbers, weights, and species, as per margin, to be delivered to the said _____ or order, on demand. Witness our hands. " SAMPLERS."
Passed :					

*Id.* sec. 1804.

**When tobacco unsound, etc., or western, what receipt to state :**

If the tobacco, received to be sampled, be found to be not good, sound, well conditioned, merchantable and clear of trash, the samples, in addition to the marks required as to passed tobacco, if required by the owner or his agent, shall also give a receipt in the form prescribed for passed tobacco, except that

the word "refused" shall be plainly written on the face thereof, instead of the word "passed."

If the tobacco be of good quality, and only too high in order for shipment, then the sampler shall not mark the receipt "refused," but shall mark it with the words "too high." If the tobacco sampled shall be western, the receipt shall so state. *Id.* sec. 1805.

#### **Penalty for false branding, etc.:**

If any person fraudulently make any false mark or brand upon any such hogshead, cask, tierce, or box, or with a fraudulent intent, alter, obliterate, or remove any mark or brand thereon, or shift the contents thereof, or cause the same to be done, he shall, for every such offense, forfeit fifty dollars. And if any person use, or permit to be used on any hogshead, cask, tierce, or box of tobacco, any name, brand, or mark indicating the name of a planter who neither raised nor sold said tobacco, he shall forfeit twenty dollars for each hogshead, cask, tierce, or box so falsely marked or branded; and if any person other than the owner, or the authorized agent of such owner, alter, obliterate, or remove any mark or brand upon any prized package of tobacco, or otherwise divert said prized package from the warehouse to which it was directed to be weighed and sampled, he shall forfeit fifty dollars for each offense. *Id.* sec. 1806.

#### **"Western tobacco" to be so branded:**

Before any unmanufactured western tobacco, whether stemmed or unstemmed, brought to Virginia in hogsheads or prized packages, shall be offered for sale, or shipped, or exported therefrom, except such tobacco *in transitu* the owner thereof, his agent, or a sampler of tobacco, shall mark or brand each hogshead or package with the words, "Western tobacco." If any person shall sell or offer for sale, or ship or export any such tobacco representing the same by marks, brands, or otherwise as Virginia tobacco, he shall be fined not less than fifty nor more than one hundred dollars, for each hogshead or package so sold or offered for sale, one half to go to the use of the state and the other half to the informer. *Id.* sec. 1807.

#### **Loose tobacco:**

The samplers shall receive and weigh all loose tobacco

brought to their warehouses, and give certificates for the same, and issue manifests thereof when delivered out. *Id.* sec. 1808.

#### **Samplers to give receipts :**

They shall, immediately on the delivery of any tobacco to their warehouses, if required by the person bringing the same, give a receipt therefor, describing the same as unsampled tobacco. Any sampler refusing to do so shall forfeit to the owner of such tobacco fifty dollars. *Id.* sec. 1809.

#### **Penalty for delivering tobacco without order of owner :**

Any sampler who shall deliver from his warehouse any tobacco without an order from the owner or his authorized agent, shall, for every hogshead, cask, or parcel of tobacco so delivered, forfeit to the owner one hundred and fifty dollars. *Id.* sec. 1810.

#### **Samplers to furnish manifests :**

The samplers shall furnish with all tobacco delivered out of their warehouses, if required by the owner or his authorized agent, a manifest or list of the same, describing, as in notes, receipts, or certificates given therefor, when the same was inspected, or, in the manifest thereof, when received from another warehouse. *Id.* sec. 1811.

#### **Receipts, etc., to be printed and dated :**

All notes or receipts and manifests shall be on printed blanks, and the date inserted at full length. *Id.* sec. 2812.

#### **Penalty for illegal receipts, etc. :**

Every sampler who shall issue a note, receipt, or manifest, in any other manner than is prescribed by law, shall be fined one hundred dollars. *Id.* sec. 1813.

#### **Resampling :**

The samplers of any warehouse, at the request of the owner, or his authorized agent, of the sampled tobacco stored therein, shall resample and weigh it, and if found to be damaged, or that any part of it has been embezzled, it shall be so entered on their books, and be subject to the order of the owner. *Id.* sec. 1814.

**Penalty for delivering wrong tobacco :**

If any sampler deliver out, in discharge of any note or receipt, other tobacco than that for which the same was issued, or alter or shift any tobacco from the hogshead or cask, in which the same was received, except in a case expressly authorized by law, he shall be fined for every such offense one hundred and fifty dollars. *Id.* sec. 1815.

**Penalty for not delivering tobacco on demand :**

If any sampler fail to deliver any tobacco, when it is demanded, to the owner thereof, or his authorized agent, he shall forfeit to such owner double the value of such tobacco. *Id.* sec. 1816.

**Samplers to keep books—What entries to make :**

The samplers shall provide and keep books, in which they shall enter the numbers, weights, marks, the names of owners of all tobacco received, sampled, or delivered out by them, as well at the time the same was received as at the time the same was sampled or delivered out, and note the state and condition of each hogshead, cask, tierce, or box; and in which, also, they shall keep fair and true account of all money received by them to the use of the proprietors of the warehouses. *Id.* sec. 1817.

**Not to buy tobacco, etc. :**

If any sampler directly or indirectly, buy, stem or manufacture any tobacco other than tobacco grown on his plantation, he shall forfeit ten dollars for every hundred pounds of tobacco so bought, stemmed or manufactured. *Id.* sec. 1818.

**Discharge from liability on delivery of tobacco :**

If any hogshead or cask of tobacco be delivered out by a sampler, and received by the owner, such sampler, from the time of such delivery, shall be discharged from any liability by reason of the fact that the said tobacco was unsound or unmerchantable, or of less quantity than the notes or receipts given for the same specify, unless it be proved that such loss was due to the negligence of the sampler. *Id.* sec. 1819.

**Samplers' fees :**

There shall be paid to said samplers for each hogshead, cask,

tierce, or box, weighing not less than five hundred pounds, sampled by them, one dollar for opening, sampling, coopering up, furnishing nails, marking, and weighing, to be paid by the owner. For a review, the fees shall not exceed one dollar; and for re-sampling the fees shall be the same. *Id.* sec. 1820.

**For rent :**

For each hogshead, cask, tierce, or box of tobacco, weighing not less than five hundred pounds, received, sampled, stored, or delivered out of any warehouse, rent shall be paid to the samplers at the following rates, to wit: Seventy-five cents for a period of four months, or any less time, and ten cents for each month or part of a month after four months that the tobacco shall remain in said warehouse, to be paid by the purchaser or person to whom the hogshead, cask, tierce, or box is delivered, which rent shall be for the exclusive use of the proprietors of the warehouse. *Id.* sec. 1821.

**For storage :**

For every hogshead, cask, tierce, or box, of the weight aforesaid, of sampled tobacco, received on storage at any warehouse, there shall be paid to the samplers thereof one dollar. *Id.* sec. 1822.

**For delivering tobacco :**

There shall be paid to the samplers of each hogshead, cask, tierce, or box, of five hundred pounds and over, delivered out of their warehouse, fifty cents, to be paid by the person to whom the hogshead, cask, tierce, or box is delivered. Where tobacco is reviewed or resampled in the same warehouse in which it was originally sampled, there shall be but one storage fee and one delivery fee, for each hogshead, cask, tierce, or box: *Provided*, that should there be any extra storage on said resampled tobacco, it shall attach to the resampled number, and be paid by the purchaser. *Id.* sec. 1823.

**When only half fees to be paid :**

For such services by the sampler, rent, and storage, as are mentioned in the four presiding sections, only one half the amount prescribed therein shall be paid where the hogshead, cask, tierce, or package is of less weight than five hundred

pounds, and the same shall be paid by the persons respectively mentioned in said sections. *Id.* sec. 1824.

#### **Fees for sale of loose tobacco :**

For all loose tobacco sold at any public warehouse, the following charges shall be paid, to wit: On every one hundred pounds of such tobacco so sold, eight cents shall be paid by the owner and the like sum by the purchaser, one half of which shall be for the samplers and the other half for the proprietors of the warehouse; and there shall be no other charges or fees for loose tobacco sold as aforesaid, but the said charges shall be in full of all services rendered in respect thereto, including receiving, unloading, weighing, and delivering. *Id.* sec. 1825.

#### **When fees to be paid :**

The samples shall require payment of all sums to be paid to the proprietors of their warehouses before the delivery of the tobacco for which they are due, and shall not be bound to deliver any such tobacco until such sums and all their own fees have been paid. *Id.* sec. 1826.

#### **When sampler from another warehouse to act—How his fees are paid :**

A sampler from another warehouse shall be authorized to act whenever his services shall be required in consequence of the disagreement in opinion of the two samplers at any warehouse as to the quality of tobacco, or in consequence of the absence of either of them, or to sample tobacco belonging to one of them. He shall be paid for his services in the first case, out of the fees of the other two samplers in the proportion to the time he acts, and, in the other cases, out of the fees of the sampler who is absent, or whose tobacco is to be sampled. *Id.* sec. 1827.

#### **Division of fees, etc., prohibited :**

No sampler shall divide his sample fees with any person, nor shall any sampler or proprietor of any warehouse pay to another a bonus to induce tobacco to be carried to his warehouse; and if any sampler or proprietor of any warehouse violate this provision, or demand or receive for his services any other fees, greater or less than are allowed by law, he shall be deemed

guilty of a misdemeanor; and any agent or representative of any person for the sale of tobacco, who receives any rebate or bonus of any part of the sampler's fees, or warehouse fees, shall be deemed guilty of a misdemeanor, and on conviction thereof be fined not less than twenty nor more than one hundred dollars: *Provided*, that nothing in this section shall be construed to prevent any sampler or proprietor of a warehouse from making and publishing a uniform reduction for the benefit of the public generally, of the fees to be charged at his warehouse for the services of such sampler, or the rent of such warehouse, respectively. *Id.* sec. 1828.

**When samplers to settle with proprietors—Insurance :**

The samplers of each warehouse shall account for and pay to the proprietors thereof, on the tenth day of April, the tenth day of July, the tenth day of October and the tenth day of January, in each year, all money received, or which ought to be received, by them, to the use of said proprietors. And the proprietors of every such warehouse shall keep, free of charge to the planter and owner of tobacco, an open policy of insurance upon their respective warehouses, sufficient to cover every loss by fire or water which any person having tobacco stored therein may sustain; and for a failure so to do, they shall be liable to the owners thereof for any damage or loss they may sustain by reason of any partial or total destruction of said tobacco by fire or water. *Id.* sec. 1829.

**Where tobacco of planter to be stored—To be sampled before sale :**

Every commission merchant or other person, to whom unmanufactured tobacco, in hogsheads or packages, owned by a farmer or planter is consigned for sale, shall store such tobacco in a public warehouse, where it is practicable, unless otherwise instructed in writing by the owner at the time of shipment, and it shall be unlawful for any person to offer such unmanufactured tobacco, when so stored in a public warehouse, for sale by sample, unless such sample has been drawn and certified by a sampler of tobacco appointed by the governor, and qualified according to law: *Provided*, that the owner of any package of prized tobacco, in person or by his authorized agent acting for him, may have the same exposed for sale, uncased and

uncovered and sampled, as loose tobacco, in the presence of both buyer and seller, without being sampled according to the provisions of this section. *Id.* sec. 1830.

#### **Proprietors to furnish scales, etc. :**

The proprietor of every warehouse shall have proper scales or balances and weights, and all other proper conveniences provided, and see that they are kept in repair, and that the weights conform to the lawful standard. *Id.* sec. 1831.

#### **Removal of samplers :**

On complaint to the governor of neglect of duty or misconduct by a sampler, he shall hear the said complaint, upon giving notice of the time and place of hearing to said sampler, and being satisfied that the complaint is sustained, he shall remove him. *Id.* sec. 1832.

#### **Use of false brand—Punished :**

If any person use, or permit to be used, on any cask, box, or keg of manufactured tobacco, any brand or mark indicating a place or a manufacturer different from the place in which, or the manufacturer by whom, it was really manufactured, he shall forfeit ten dollars for each cask, box, or keg so falsely marked or branded; one half thereof shall be to the informer. *Id.* sec. 1833.

#### **Manufactured tobacco :**

None of the provisions of this chapter, other than the preceding section, shall be construed to apply to the manufactured tobacco. *Id.* sec. 1834.

#### **Nesting punished :**

If any person nest a hogshead of tobacco with inferior tobacco, or other thing, with the intent to defraud the purchaser he shall be fined one hundred dollars for each hogshead or cask so nested. *Id.* sec. 1835.

#### **Penalties for certain violation :**

If any person violate any of the provisions of section eighteen hundred and twenty or of the sections following to 1826 inclusive, or of section 1830, he shall be fined one hundred dollars, one half to go to the informer. *Id.* sec. 1836.

**Record to be kept by commander of vessel, etc., for tobacco shipped :**

The commander of any boat or vessel taking on board of his vessel any tobacco, in bulk or in parcels, otherwise than in hogsheads or casks, to be transported for hire from one part of the state to another part thereof, shall keep a record of the quantity of such tobacco, how incased, if at all, and the names and addresses of the consignors and consignees; which record shall be open to the inspection of any party interested. For every violation of this section, such commander shall be fined twenty dollars. *Id.* sec. 1837.

**Punishment for receiving tobacco without consent of owner :**

If the commander of such boat or vessel, or other person employed thereon, shall knowingly, without the consent of the owner, take any tobacco on board, or conceal the fact of its being on board, the party so offending, if he be the commander of such boat or vessel, shall forfeit ten cents for every hundred pounds weight of such tobacco; if he be a person other than the commander, shall forfeit twenty dollars for such offense. All tobacco put on board such boat or vessel without the knowledge of the owner shall be restored to him. *Id.* sec. 1838.

**Publication of insurance :**

Every proprietor of a public tobacco warehouse shall, at least once a year, publish in some newspaper published in this state, once a week for four successive weeks, a statement showing the amount of insurance he has on such warehouse, the companies in which the insurance has been effected, and the length of time the policies have to run. *Id.* sec. 1839.

**Reprized packages :**

Each sampler shall keep in a different column an account of all reprized packages from original samples. For the failure to comply with the provisions of this section, the sampler shall be fined one hundred dollars, and it shall be sufficient cause for removal from office. *Id.* sec. 1840.

**Punishment for sending tobacco to wrong warehouse :**

If any person or corporation send the tobacco of a planter

or other person to any warehouse other than that to which such tobacco is marked by the owner or his agent, the person or corporation so sending such tobacco shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not less than twenty nor more than fifty dollars for each package so sent. *Id.* sec. 1841.

**Sale by samplers of unclaimed tobacco—Disposition of proceeds :**

When any tobacco shall have remained in any warehouse in the city of Richmond undemanded for a term of three years from the time of its inspection therein, the inspectors or samplers for said warehouse shall advertise in some newspaper published in said city once a week for three consecutive weeks, a list of marks, numbers and weights of such tobacco, with the names of the persons to whom notes or receipts for it were given, and if no owner claims said tobacco and pays the accrued extra storage thereon within sixty days after date of such advertisement, they shall sell or cause the same to be sold on account of whom it may concern. The proceeds of such sale shall be paid into the treasury, after deducting therefrom all the usual charges for selling. The amounts so paid into the treasury shall be refunded to the owner of said tobacco, on the return to the inspectors or samplers of the notes or receipts issued for the same. *Id.* sec. 1842.

**Judges to charge grand juries :**

The judges of the county and corporation courts, in such counties and corporations as have public tobacco warehouses therein, shall give the provisions of this chapter in charge to the grand juries. *Id.* sec. 1843.

**When receipts not to be issued—Duplicate receipts :**

No person shall issue any such licensed warehouse or other licensed storage receipt unless he be the keeper of a regularly licensed warehouse or other licensed place of storage in this state for goods, wares, merchandise, cotton, grain, flour, tobacco, lumber, iron or other commodity stored with such person and shall have duly paid to the commonwealth the tax for such license, and unless the property therein mentioned shall be actually in store or on his premises and under his con-

trol at the time of issuing such receipt, nor shall a second or duplicate receipt for any property be issued while a former receipt for such property or any part thereof is outstanding and uncancelled without having written or stamped in plain letters across the face of such second or duplicate receipt the word "duplicate"; and the said duplicate shall express on its face the reason for the issuance of the same, stating whether the original receipt was lost, burned, or stolen, and the person to whom said duplicate receipt is issued shall give to the warehouse issuing the same a bond in the penalty of double the value of the article for which said original receipt was given; and it shall be the duty of such person keeping such licensed warehouse or licensed place of storage to cause to be posted prominently over the door of his place of business a sign indicating that such warehouse or place of storage is duly licensed; and such person shall also cause to be written or stamped in plain letters upon the bill-heads and envelopes used by him in said business words indicating that the warehouse or place of storage kept by him is duly licensed. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction fined not less than fifty dollars nor more than one hundred dollars for each offense.  
Supplement to the Code of Virginia, 1887-98, sec. 1792.

**Fraudulent sale, negotiation, pledge, or hypothecation of licensed warehouse or other licensed storage receipts, and to provide punishment in respect thereto :**

Any firm or person, natural or artificial, who shall issue any licensed warehouse or other licensed storage receipt for farm product in his own name, being in possession of said farm product for or on account of another, and sell, negotiate, pledge, or hypothecate such licensed warehouse or other licensed storage receipt and fraudulently fail to account for or pay over to his principal or the owner of the property the amount so received on such sale, negotiation, pledge, or hypothecation less the charges and amount due him shall be deemed guilty of the larceny of such money or the farm product of the receipt, and upon conviction thereof punished by confinement in the penitentiary not less than one year nor more than five years, and the failure to account for or pay over to such principal or owner shall be *prima facie* proof of fraudulent intent. *Id.* sec. 3718a.

An Act to provide for weighing leaf tobacco in warehouses, requiring proprietors thereof to furnish itemized statements and fixing a penalty. Approved, March 6, 1900:

Be it enacted by the general assembly of Virginia, that all leaf tobacco sold upon the floor of any tobacco warehouse in the state of Virginia shall first be weighed by some reliable person who shall have first sworn and subscribed to the following oath, to wit:

I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of \_\_\_\_\_, and correctly test and keep accurate the scales upon which the tobacco offered for sale is weighed.

Said oath to be filed in the office of the clerk of the county or city court of the county or city in which said warehouse is situated.

The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, or any other charges made for selling and handling such tobacco.

That for each and every violation of the provisions of this act, a penalty of ten dollars be enforced, and the same may be recovered by any one so offended.

This act shall be in force from and after the first day of October, nineteen hundred. Laws of Virginia, 1900, chapter 901.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment and sale—Ambiguous receipts—Question for the jury.*

Plaintiff's intestate delivered wheat to the defendant and received therefor a receipt in the following terms: "Received, June 4th, 1886, of William Reherd, seven hundred one and 51, of No. Two wheat in store, less five bushels paid Isaac Billhimer, for which we are to pay market price same quality of wheat whenever Mr. Reherd wants to sell same." The property was destroyed by fire and it was not alleged that the defendant was guilty of negligence. Upon demand being made of the defendant for the value of the wheat it was refused on the ground that the contract was one of bailment and not of sale. It was *held* on appeal that the plaintiff was entitled to have had the following instruction given to the jury and that the court's refusal thereof constituted reversible error: "If the jury believe from the evidence that William Reherd in his lifetime delivered the wheat which is the subject of controversy into the mill of the defendants, upon a contract with the defendants, that they, the defendants, should pay for the same in money at the market price whenever the said William Reherd should name the time of the market price therefor, and that the defendants had the right to use said wheat as they thought proper, then such contract was a *sale* of the wheat and not a *bailment*." *Reherd's Admr. v. Clem & Wenger*, 86 Va. 374.

*Same—Wheat to be ground—Fire—Bailment.*

Where wheat is delivered at a mill to be ground, upon an agreement that the miller shall return to the farmer a given quantity of flour for so many bushels of wheat, the miller is a *bailee* and not a *purchaser*, and therefore if the wheat be consumed by accidental fire, the miller will not be responsible for it. This conclusion will not be altered by an understanding between the parties that the miller is not bound to return flour made from that identical wheat, but flour of a certain quality, made from any wheat in the mill. *Slaughter v. Green et al.*, 1 Rand. 3.

**L.**

*Detinue—Bailee may maintain—Counts in declaration.*

A bailee of chattels may maintain *detinue* for them upon his right of possession as bailee. Two counts in a declaration in *detinue*, one counting on a right of property in the plaintiff, and the other on a right of possession in him as bailee: *Held no misjoinder of actions. Boyle v. Townes*, 9 Leigh, 158.

**N.**

*Loss by theft—When reputation of bailee not in question.*

Where property was intrusted to one and an action was brought against his administrator by the bailor for the recovery thereof, the defendant pleaded *non assumpsit*. The plaintiff alleged that the reputation and character of the original bailee was in issue because the declaration, being *assumpsit*, charged him with an intent to deceive and defraud the plaintiff, and as the defendant had failed to put in any testimony showing that the character of the bailee was good, the counsel for the plaintiff relied on this fact as a significant one tending to show that the character and reputation of the bailee was bad. After argument of counsel on both sides, the court, on its own motion, instructed the jury that the character of the bailee was not in issue and that the jury should disregard all arguments made before them based on the failure of the defendant to introduce testimony as to the bailee's character. On appeal, this ruling was *held* correct on the ground that in civil cases evidence of general character is never receivable unless the nature of the action involves the character of the party or goes directly to affect the same. *Danville Bank v. Waddill's Admr.*, 31 Grat. 469.

**P.**

*Insurance—Warehouseman's own goods—Pro rata distribution.*

A warehouseman insured the contents of his warehouse, in which there was also stored some of his own goods, against loss of fire. It was *held*, after loss had occurred, that he could recover the full amount of insurance, that he was entitled to pay out of such sum all costs, including the costs of the policies paid either by himself or other owners, and attorneys' fees incurred in the collection thereof; and that the balance must be

distributed *pro rata* among the several owners, including himself. *Boyd, Trustee et al., v. McKee et al.*, 99 Va. 72.

Q.

*Warehouse receipt*—When ambiguous, parol evidence will be received.

Where a warehouse receipt is ambiguous in its terms and is susceptible of explanation tending to show whether or not the contract was a sale or bailment, evidence will be received to show what was the purpose and intent of the parties. *Rutherford's Admr. v. Clem & Wenger*, 86 Va. 374.

## CHAPTER XLVII.

## WASHINGTON.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Bill of lading or warehouse receipt, what is :**

A bill of lading or warehouse receipt is an instrument in writing signed by a carrier, warehouse proprietor, or his agent, describing the freight so as to identify it, stating the name of the consignor or owner, the terms of the contract for carriage or storage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. Codes & Statutes of Washington (Ballinger), 1897, sec. 3590.

**Above section construed :**

A receipt signed by a mill owner as "warehouseman" does not thereby become a warehouse receipt. *Steubli v. Blaine Nat. Bank*, 11 Wash. 426.

**Warehouse receipts to be given by whom, and to show what :**

It shall be the duty of every person keeping, controlling, managing, or operating, as owner or agent or superintendent of any company or corporation, any warehouse, commission house, forwarding house, mill, wharf, or other place where grain, flour, pork, beef, wool, or other produce or commodity is stored, to deliver to the owner of such grain, flour, pork, beef, wool, or produce or commodity, a warehouse receipt therefor, bearing the full name of those operating said houses, which receipt shall bear the date of its issuance, and shall state from whom received, the number of sacks, if sacked, the number of bushels or pounds, the condition or quality of the same, and the terms and conditions upon which it is stored. Codes & Statutes of Washington (Ballinger), 1897, sec. 3591.

**General form of warehouse receipt:**

The receipt required in the last preceding section of this chapter shall be in form as follows:

(Name of firm or company.)

No..... (Place and date.)

Received in store from (name of consignor), (quantity), gross ..... lbs., tare, ..... lbs., net, ..... lbs., No.....(give here grade and name of commodity), at owner's risk of unavoidable damage, to be delivered at this warehouse, upon return of this receipt, properly indorsed, and payment of charges. This receipt negotiable when duly indorsed by consignor. Storage to (here give amount and date).

Signed (Name of firm or company.)

(Name of agent), Agent.

*Id. sec. 3592.*

**Receipts not to be given, when—Duplicates must be so marked :**

No person shall issue any receipt or other voucher, as provided for in section 3591, for any grain, flour, wool, pork, beef, or other produce or commodity, not actually in store at the time of issuing such receipt, or issue any receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or grade of such property, or duplicate or issue a second receipt for the same, while any former receipt is outstanding for the same property, or any part thereof, without writing across the face thereof the word "duplicate." *Id. sec. 3593.*

**Warehousemen must not mix grain, etc., so as to destroy identity :**

No person operating any warehouse, commission house, forwarding house, mill, wharf or other place where grain, flour, pork, beef, wool, or other produce or commodity is stored shall mix any grain, flour, beef, pork, wool, or other produce or commodity of different grades together, or deliver one grade for another, or in any way tamper with the same while in his possession or custody, with a view of securing any profit to himself or any other person, and in no case mix different grades together while in store: *Provided*, That nothing in this act shall be construed to prohibit any person operating any warehouse, commission house, forwarding house, mill, wharf, or other place

where grain, pork, wool, or other produce or commodity is stored from keeping, filling or storing any produce or commodity, offered for storage separate and apart from other produce or commodity, by marking such produce or commodity in such a manner that it can be identified and delivered on presentation of the warehouse receipt or voucher which was given for same; in which case the receipt given shall designate the mark on the produce or commodity so stored. *Id.* sec. 3594.

**Consent of receipt-holder necessary for release of goods:**

No person operating any warehouse, commission house, forwarding house, mill, wharf, or other place of storage, shall sell, incumber, ship, transfer, or in any manner remove or permit to be shipped, transferred, or removed from the place of storage at which the receipt is given, any grain, flour, beef, pork, wool, or other produce or commodity for which a receipt has been given by him as aforesaid, whether received for storing, shipping, grinding, or manufacturing, or other purposes, without the written consent of the holder of the receipt. *Id.* sec. 3595.

**Goods must be delivered on presentation of receipt:**

On the presentation of the receipt given by any person operating any warehouse, commission house, forwarding house, mill, wharf, or other place of storage, for any grain, flour, beef, wool, pork, or other produce or commodity, and on payment of all the charges due thereon, the owner shall be entitled to the immediate possession of the commodity named in such receipt, and it shall be the duty of such warehouseman, wharfinger, mill man, or other person having the possession thereof, to deliver such commodity to the owner of such receipt without further expense to such owner, and without unnecessary delay. *Id.* sec. 3596.

**Criminal prosecutions and actions for damages:**

Any person who shall violate any of the provisions of this act shall be liable to indictment, and upon conviction shall be fined in any sum not exceeding five thousand dollars, or imprisonment in the penitentiary of this state not exceeding five years, or both; and in case of a corporation the person acting for said corporation shall be liable for a like punishment upon indictment and conviction. And all and every person or per-

sons aggrieved by a violation of this act may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation, before any court of competent jurisdiction, whether such person shall have been convicted under this act or not. *Id.* sec. 3597.

**Receipts, etc., declared negotiable—Indorsement—Effect of :**

All checks or receipts given by any person operating any warehouse, commission house, forwarding house, mill, wharf, or other place of storage, for any grain, flour, pork, beef, wool, or other produce or commodity, stored or deposited, and all bills of lading, and transportation receipts of every kind, are hereby declared negotiable, and may be transferred by indorsement of the party to whose order such check or receipt was given or issued, and such indorsement shall be deemed a valid transfer of the commodity represented by such receipt, and may be made either in blank or to the order of another. *Id.* sec. 3598.

**Above section construed—Negotiability :**

A statute making warehouse receipts negotiable by indorsement cannot be construed as making an indorsement of a warehouse receipt effective otherwise than as a transfer of the interest of the holder in and to the property represented by the receipt. *Yarwood v. Happy*, 18 Wash. 246.

**Same—Negotiability of warehouse receipt :**

All the title to the freight which the first holder of a bill of lading or warehouse receipt had, when he received it, passes to every subsequent indorser thereof in good faith, and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange. Codes & Statutes of Washington (Ballinger), 1897, sec. 3599.

**When drawn to “bearer,” transferred by delivery :**

When a bill of lading or warehouse receipt is made to “bearer,” or in equivalent terms, a simple transfer thereof by delivery conveys the same title as an indorsement. *Id.* sec. 3600.

**Not to affect certain rights :**

A bill of lading or warehouse receipt does not alter the rights or obligations of the carrier or warehouse proprietor as defined in this chapter, unless it is plainly inconsistent therewith. *Id.* sec. 3601.

**Duplicate bills of lading, etc.:**

A carrier or warehouse proprietor must subscribe and deliver to the consignor on demand any reasonable number of bills of lading or warehouse receipts, not exceeding three (one original, and the balance marked "duplicate," and the original to state the number of duplicates issued), of the same tenor, expressing truly the original contract for carriage or storage, and if he refuses to do so, the consignor may take the freight from him, and recover from him, besides, all damages thereby occasioned. *Id.* sec. 3602.

**Exoneration of carrier, etc.:**

A carrier or warehouse proprietor is exonerated from liability for freight by delivery thereof, in good faith, to any holder of an original bill of lading or warehouse receipt thereof, properly indorsed, or made in favor of the bearer. *Id.* sec. 3603.

**Carrier may require bill or indemnity :**

When a carrier or warehouse proprietor has given a bill of lading, warehouse receipt, or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight. *Id.* sec. 3604.

**Singular number to import plural:**

Words used in this act in the singular number shall be construed to import the plural number, whenever such construction is necessary to give force and effect to the provisions of this act. *Id.* sec. 3605.

**When lien exists :**

Whenever property upon which charges for advances, freight, transportation, wharfage, or storage, due and unpaid, and a lien shall remain and be held in store by the person or persons in whose favor such lien exists uncalled for, it shall be

lawful for such person or persons to cause such property to be sold as is herein provided. *Id.* sec. 5963.

#### **When certain property may be sold for charges :**

If said property consists of live stock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or other of the perishable property liable, if kept, to destruction, waste, or great depreciation, the person or persons having such lien may sell the same upon giving ten days' notice. *Id.* sec. 5964.

#### **When other property may be sold :**

All other property upon which such charges may be unpaid, due, and a lien, after the same shall have remained in store uncalled for for a period of thirty days after such charges shall have become due, may be sold by the person or persons having a lien for the payment of such charges upon giving ten days' notice: *Provided*, That where the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of sale. *Id.* sec. 5965.

#### **Application of proceeds of sale :**

The moneys arising from the sales made under the provisions of this chapter shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transportation, wharfage, or storage, for whose benefit the sale shall have been made; the surplus, if any, shall be retained, subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owner still remaining in store uncalled for, if any there be, and to the demand of the owner of the property who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special fund for the benefit of the lawful claimant thereof. *Id.* sec. 5966.

#### **Special contract not affected :**

Nothing in this chapter contained shall be so construed as

to alter or affect the terms of any special contract in writing, made by the parties, as to the advances, affreightment, wharfage, or storage; but when any such special contract shall have been made, its terms shall govern, irrespective of this chapter. *Id.* sec. 5967.

**Notices, how given :**

All notices required under this chapter shall be given as is or may be by law provided in cases of sales of personal property upon execution. *Id.* sec. 5968.

**Forgery of warehouse receipts :**

If any warehouseman, miller, storage, forwarding or commission merchant, or his or their servants, agents, or clerks, shall willfully and fraudulently make or alter any receipt or other written evidence of the delivery into the warehouse, mill, store, or other building belonging to him, them, or either of them, or his or their employers, of any grain, flour, pork, beef, or wool, or other goods, wares, or merchandise which shall not have been so received or delivered into such mill, warehouse, store or other building previous to the making and altering such receipt or other written evidence thereof, he shall, upon conviction thereof, be imprisoned in the penitentiary not more than two years, nor less than six months, or imprisoned in the county jail for any length of time not exceeding one year, and fined in any sum not exceeding one thousand dollars. *Id.* sec. 7130.

**Unclaimed and lost property—Consignee to keep record :**

Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him, a description of such property, with the date of reception thereof. *Id.* sec. 3055.

**Notice to owner, how given :**

If such property shall not have been left with consignee or bailee, for the purpose of being forwarded or disposed of according to directions received of such consignee or bailee, at or

before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner by letter directed to him and deposited in a post-office, of the reception of such property. *Id.* sec. 3056.

**Sale after one year if not claimed :**

If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell the same, in the manner provided in this chapter. *Id.* sec. 3057.

**Notice of intent to sell—Notice of sale :**

Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence, or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the state; the last publication of such notice shall be at least eighteen days previous to the time of sale. *Id.* sec. 3058.

**Procedure—Affidavit to be filed with justice of the peace :**

If the owner or person entitled to such property shall not take the same away, and pay the charges thereon, after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown. *Id.* sec. 3059.

**Justice to make inventory and order sale :**

Upon the delivery to him of such affidavit, the justice shall

cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory and order, under his hand, that the property therein described be sold by any constable of the precinct where the same shall be, at public auction. *Id.* sec. 3060.

**Notice of sale, how given :**

It shall be the duty of such constable receiving such inventory and order to give ten days' notice of the sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution from justice's courts. *Id.* sec. 3061.

**Return of order and inventory :**

Upon completing the sale, the constable making the same shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the justice, together with the inventory and the proceeds of sale, after deducting his fees. *Id.* sec. 3062.

**Disposition of proceeds of sale :**

From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person. *Id.* sec. 3063.

**Duties of treasurer :**

The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement, so delivered to him by the justice. *Id.* sec. 3064.

**Claim by owner for proceeds of sale :**

If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money shall have

been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him. *Id.* sec. 3065.

**After five years to be applied to school fund :**

If the amount so deposited with any county treasurer shall not be claimed by the owner thereof, or his legal representatives, within the said five years, the same shall belong to the county, and shall be applied to the common school fund of said county. *Id.* sec. 3066.

**Sale of perishable property :**

Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, the sale to be conducted, and the proceeds of the same to be applied in the manner before provided in this title: *Provided*, that any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in section 3060. *Id.* sec. 3067.

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NOTE. For the laws governing the inspection of grain, the appointment of grain inspectors, etc., see secs. 2868 to 2909 of Ballinger's Codes and Statutes of Washington, 1897.

## DECISIONS AFFECTING WAREHOUSEMEN.

## B.

*Wharfinger's liability.*

Where a wharfinger for hire allowed goods of his customer to be placed upon his wharf which was in a rotted condition, resulting in the loss of the goods. It was *held* wharfinger was liable for value of the goods at time of their loss. *Oregon Imp. Co. v. Seattle Gas Co.*, 4 Wash. 634.

## M.

*Pledge—Stolen property—Instruction to jury.*

Where goods are stolen and pledged with a pawnbroker the defendant is not entitled to instructions on the theory that he had a right to rely on the apparent title of the pledgor. *Rumpf v. Barto et al.*, 10 Wash. 382.

## Q.

*Warehouse receipt.*

A mere receipt signed by a mill owner as "warehouseman" does not make it warehouseman's receipt. *Steubli v. Blaine Nat. Bank*, 11 Wash. 426.

*Same—Negotiability.*

Warehouse receipts made negotiable by statute only pass by indorsement the interest which the holder has in and to the property represented by the receipt. *Yarwood v. Happy*, 18 Wash. 246.

*Same—Negotiated by pledgee—Effect.*

Where one holding a warehouse receipt as security for a loan, and in violation of the terms of the agreement, transfers it to a third party as security, *held* that original pledgor could recover the receipt from the third party. *Id.*

## CHAPTER XLVIII.

## WEST VIRGINIA.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Burning certain buildings—Penalty :**

If a person maliciously burn any meeting house, court house, town house, college, academy, or other building erected or used for public purposes (except a jail or prison), or any banking house, *warehouse*, storehouse, manufactory or mill, of another person, not usually occupied by persons lodging therein at night, or if he maliciously set fire to anything, by the burning whereof any building mentioned in this section shall be burnt, he shall be confined in the penitentiary, when such building with the property therein is of the value of one thousand dollars, not less than three nor more than ten years; and when it is of less value, not less than three nor more than five years. Laws, West Virginia, 1899, chapter 3.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment—Bailee cannot dispute bailor's title—Exceptions to the rule.*

The general doctrine is well established that, in ordinary cases, the bailee cannot dispute his bailor's title any more than a tenant can his landlord's. But the general rule has numerous exceptions, in which he will be permitted to do so; as in a case where it can be shown that the latter fraudulently obtained possession of the goods, or that they have been recovered from the former by suit or paramount title; or he has been notified by the true owner, before the suit was instituted by the bailor, not to deliver to his bailor, and like instances. *Kelly v. Patchell*, 5 W. Va. 585.

*Same—Jurisdiction of equity.*

In a sense a bailment is a trust, but not such as is cognizable in equity, it is a subject of common-law jurisdiction. Where, therefore, a bill in equity was filed against one who had offered to gratuitously retain the property in his possession for the complainant, it appearing that the complainant charged the defendant with wrongful conversion of the property, the decree of the court dismissing the bill was affirmed on appeal. *Thompson et al. v. Whitaker Iron Co. et al.*, 41 W. Va. 574.

*Same—Statute of limitations—Demand must be made within reasonable time.*

While it is true that demand must be made before action brought for an alleged conversion, it is also true that the time within which such demand must be made cannot be indefinitely prolonged. A creditor cannot keep his debtor in debt indefinitely. What is a reasonable time is not settled by any precise rule; it would seem reasonable to require that demand should be made within the time limited by the statute for bringing the action. The same reason exists for hastening the demand as for hastening the commencement of action. *Id.*

*Same—Whether an action be ex contractu or ex delicto still one of contract.*

In general it is optional with the plaintiff to declare against a bailee in form *ex contractu* for the breach of the express contract entered into by him or on the promise implied from the act of bailment; or, in tort for the breach of the duty, which is by law impliedly cast on the bailee; but it seems, that in whatever form he may frame his declaration, the action is still one of contract. *Coal Co. v. Richter*, 31 W. Va. 858; *Maloney v. Barr*, 27 W. Va. 381.

#### M.

*Pledge—A bailment—Definition.*

A pledge may be defined to be a bailment of goods by a debtor to his creditor, to be kept by him until the debt is discharged. *First National Bank v. Harkness et al.*, 42 W. Va. 156.

#### R.

*Bills of lading—Effect of transfer—As collateral.*

The transfer of a bill of lading is equivalent to the transfer of the property itself. Where a bill is transferred or delivered as collateral security, the rights of the pledgee thereunder are the same as those of an actual purchaser of the goods represented, for value. *Neill & Ellingham v. Rogers Bros. Produce Co.*, 41 W. Va. 37; *Dows v. Bank*, 91 U. S. 618.

## CHAPTER XLIX.

## WISCONSIN.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Duty of consignee or bailee:**

Whenever any personal property shall be consigned to or deposited with any common carrier, forwarding merchant, wharfinger, or warehouseman, innkeeper or the keeper of any depot for the storage of baggage, merchandise or other personal property, such consignee or bailee shall immediately cause to be entered in a proper book kept by him a description of such property with the date of the reception thereof; and if the same shall not have been so consigned or deposited for the purpose of being forwarded or disposed of according to directions received by such consignee or bailee at or before his reception thereof he shall immediately notify the owner by mail thereof, if his name and residence be known or can with reasonable diligence be ascertained. Revised Statutes, Wisconsin, 1898, sec. 1637.

**Sale of property:**

If any such property shall not be claimed and taken away within one year after it shall have been so received, the same may be sold as hereinafter directed; but when such property shall be perishable or subject to decay by keeping, it may be sold if not claimed and taken within thirty days; and if any such property be in a state of decay or manifestly liable to immediate decay it may be summarily sold without notice, by order of a justice of the peace, after inspection, as provided in section 1641. *Id.* sec. 1638.

**Notice of sale:**

Before any such property, except as aforesaid, shall be sold ten days' notice of such sale, if the property be perishable or subject to decay by keeping, and sixty days' notice in other

cases, shall be given the owner thereof by the person in possession of such property, either personally or by mail or by leaving a written notice at his residence or place of business ; but if the name and residence of such owner be not known and cannot with reasonable diligence be ascertained such notice shall be given by publication thereof for the periods aforesaid respectively, dating from the first publication, at least once in each week, in a newspaper published in the county, if there be one ; and if there be none, then in a newspaper published in an adjoining county. *Id.* sec. 1639.

#### **Proceedings if property not claimed :**

If the owner or person entitled to such property shall not take the same away and pay the charges thereon after notice as aforesaid shall have been given the person having possession thereof, his agent or attorney shall make and deliver to a justice of the peace of the same town an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice and whether the owner of such property be known or unknown. *Id.* sec. 1640.

#### **Inventory :**

Upon the delivery to him of such affidavit the justice shall cause such property to be opened and examined in his presence and a true inventory thereof to be made, and shall annex to such inventory an order under his hand that the property therein described be sold by any constable of the city or town where the same shall be at public auction. *Id.* sec. 1641.

#### **Notice and sale :**

The constable receiving such inventory and order shall give ten days' notice of the sale by posting up written notices thereof in three or more public places in such city or town and sell such property at public auction to the highest bidder in the same manner as provided by law for sales under execution from justices' courts. *Id.* sec. 1642.

#### **Return of sale :**

Upon completing the sale the constable making the same shall indorse upon the order aforesaid a return of his proceedings thereon and return the same to the justice, together with

the inventory and the proceeds of the sale, after deducting his fees. *Id.* sec. 1643.

#### **Justice's duty :**

From the proceeds of such sale the justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge if the proceeds of such sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of his county and deliver a statement therewith containing a description of the property sold, the gross amount of such sale and the amount of costs, charges and expenses paid to each person. The county treasurer shall file such statement, give a receipt for the money, and properly enter in his books the amount thereof and the date. *Id.* sec. 1644.

#### **Disposition of proceeds :**

If the owner of the property sold, or his legal representatives shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him. If not claimed within said time by the owner or his legal representatives the same shall belong to the county. *Id.* sec. 1645.

#### **Officers' fees :**

The fees allowed to any justice of the peace under this chapter shall be one dollar for each day's service, and to any constable the same fees as are allowed by law for sales upon execution, and ten cents per folio for making an inventory of property. *Id.* sec. 1646.

#### **Warehouse receipts :**

Every warehouse receipt on which the words "not negotiable" shall not be written or stamped upon the face thereof shall be deemed negotiable as aforesaid. The instruments mentioned in section 4425 shall be negotiable as therein provided. *Id.* sec. 1676.

#### **Instruments signed by agents :**

Every note, certificate or warehouse receipt signed by the

agent or any person, under a general or special authority, shall bind such person and have the same effect and be negotiable as provided in the two preceding sections. *Id.* sec. 1677.

#### **Actions :**

The payees and indorsees of every such note, certificate or warehouse receipt payable to them or their order and the holders of every such note or receipt payable to bearer may maintain actions for the sums of money or things therein mentioned in like manner, as in cases of inland bills of exchange and not otherwise. *Id.* sec. 1678.

#### **Connection with tracks :**

The owner of any elevator, warehouse, mill, lumber, coal or wood yard within the yard limits of any station or terminus of any railroad may, at his own expense, construct a railroad track from such elevator, warehouse, mill or yard to such railroad and connect with the same by a switch at a point within the yard limits of such station or terminus, and the railroad corporation shall allow such connection. Such side track and switch shall at all times be under the control and management of and be kept in repair and operated for the benefit of such owner or his assigns by such corporation: but the actual cost of so maintaining and operating the same shall be paid monthly by the owner thereof: and in case of his neglect to so pay the same upon demand the obligation of this section upon any such corporation shall cease until such payment be made in full. And no such railroad track constructed before the eleventh day of May, 1891, shall be removed without first giving the parties owning such elevator, warehouse, mill or yard six months' notice of such removal. *Id.* sec. 1802.

#### **Above section construed—Plaintiff must show ownership or who constructed spur track before being entitled to benefits of the above :**

The plaintiff, a warehouseman, brought an action against the defendant railroad company attempting to compel the latter to operate a certain spur or track in front of the plaintiff's warehouse and to receive his goods from such spur. A demurrer was filed to the complaint and it was held on appeal that since the complaint did not show either who constructed

the spur or who owned it, that it failed to show a case within the statute. There was nothing in evidence to show that the spur in question had not been constructed by the railroad at its own expense. The evidence also failed to show any consideration which would support an agreement between the parties under which the railroad would be obliged to operate the track for the benefit of the plaintiff. *Burlett v. Chicago & N. Ry. Co.*, 96 Wis. 335.

#### **Of factors, brokers, etc., for advances, etc. :**

Every factor, broker or other agent intrusted by the owner with the possession of any bill of lading, custom-house permit, warehouse receipt or other evidence of the title to personal property, or with the possession of personal property for the purpose of sale or as security for any advances made or liability by him incurred in reference to such property, shall have a lien upon such personal property for all such advances, liability incurred or commissions or other moneys due him for services as such factor, broker or agent, and may retain the possession of such property until such advances, commissions or moneys are paid or such liability is discharged. Revised Statutes, Wisconsin, 1898, sec. 3346.

#### **How such liens enforced :**

Every person having a lien given by either of the four last sections or existing in favor of any bailee for hire, carrier, warehouseman or pawnee or otherwise, by the common law, may, in case such debt remain unpaid for three months and the value of the property affected thereby does not exceed one hundred dollars, sell such property at public auction and apply the proceeds of such sale to the payment of the amount due him and the expenses of such sale. Notice, in writing, of the time and place of such sale and of the amount claimed to be due shall be given to the owner of such property personally, or by leaving the same at his place of abode, if a resident of this state, and if not, by publication thereof once in each week, for three weeks successively, next before the time of sale in some newspaper published in the county in which such lien accrues, if there be one, and if not, by posting such notice in three public places in such county. If such property exceed in value one hundred dollars, then such lien may be enforced against

the same by action in any court having jurisdiction. *Id.* sec. 3347.

#### **Transferee of warehouse receipt, etc., deemed owner :**

Warehouse receipts, bills of lading or railroad receipts given for any goods, wares, merchandise, lumber, timber, grain, flour or other produce or commodity stored, shipped or deposited with any warehouseman, wharfinger, vessel, boat or railroad company or other person on the face of which shall not be plainly written the words "not negotiable" may be transferred by delivery with or without indorsement thereof; and any person to whom the same may be so transferred shall be deemed and taken to be the owner of the goods, wares and merchandise therein specified so far as to give validity to any pledge, lien or transfer made or created by such person or persons; but no such property shall be delivered except on surrender and cancellation of said original receipt or bill of lading or the indorsement of such delivery thereon in case of partial delivery. *Id.* sec. 4194.

#### **Penalty for burning building :**

Any person who shall willfully and maliciously burn, in the night-time, any meeting-house, church, court-house, town-house, college, academy, jail or other building erected for public uses, or any ship, steamboat or other vessel, or any banking house, warehouse, store, manufactory or mill of another, or of which he is lessee or tenant, or any barn, stable, shop or office of another, or of which he is lessee or tenant, within the curtilage of any dwelling-house or other building, by the burning whereof any building mentioned in this section shall be burnt in the night-time, shall be punished by imprisonment in the state prison not more than fifteen years nor less than five years; but if such offense was committed in the day-time the person guilty thereof shall be punished by imprisonment in the state prison not more than eight years nor less than four years. *Id.* sec. 4401.

#### **Burning other buildings :**

Any person who shall willfully and maliciously burn, either in the night-time or day-time, any building whatsoever of another, or of which he is lessee or tenant, other than is mentioned in the last preceding section, or any bridge, lock, dam or flume,

shall be punished by imprisonment in the state prison not more than eight years nor less than four years. *Id.* sec. 4402.

#### **Burning property to injure insurer :**

Any person who shall willfully burn any building or any goods, wares, merchandise or other chattels, which shall be at the time insured against loss or damage by fire, with intent to injure the insurer, whether such person be the owner of the property or not, shall be punished by imprisonment in the state prison not more than ten years nor less than three years. *Id.* sec. 4405.

#### **Breaking office, car, etc., for felonious purpose :**

Any person who shall break and enter, in the night-time, any office, shop or warehouse or any other building, not adjoining or occupied with any dwelling-house, or any ship, steam-boat, vessel, railroad freight car or passenger car, with intent to commit the crime of murder, rape, robbery, larceny or other felony, shall be punished by imprisonment in the state prison not more than five nor less than one year. *Id.* sec. 4409.

#### **Entry at night, breaking at day :**

Any person who shall enter in the night-time, without breaking, or shall break and enter in the day-time any dwelling-house or any out-house, thereto adjoining and occupied therewith, or any office, shop or warehouse or other building, or any ship, steamboat or vessel, railroad freight car or passenger car, with the intent to commit the crime of murder, rape, robbery, larceny or other felony shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year nor less than six months. *Id.* sec. 4410.

#### **Unlawful entry :**

Any unlawful entry of a dwelling-house or other building with intent to commit a felony shall be deemed a breaking and entering of such dwelling-house or other building within the meaning of the last four sections. *Id.* sec. 4411.

#### **Larceny and receiving stolen goods from buildings, cars, etc. :**

Any person who shall break and enter, at any time, any

meeting-house, church, court-house, town-house, college, academy or other building erected and employed for public use and steal therein the money or property of another, or shall commit the crime of larceny in any dwelling-house, office, shop, bank, warehouse or other building, ship, steamboat, vessel, railroad freight car or passenger car by stealing therein the money or property of another, if the money or property so stolen shall exceed the value of twenty dollars, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year nor less than six months or by fine not exceeding two hundred dollars; and if the money or property so stolen shall not exceed the value of twenty dollars he shall be punished by imprisonment in the county jail not more than six months or by a fine not exceeding one hundred dollars.

*Id.* sec. 4412.

#### **Embezzlement by officers, carriers, agents, attorneys, etc. :**

Any officer, agent, clerk, employee or servant of this state or of any county, town, school district, city, village or other municipal corporation therein, or of any banking, railroad, insurance or telegraph company or other corporation, or of any joint-stock company or association, or in the service or employment thereof, who, by virtue of such office or employment, shall have the possession or custody of, or shall be intrusted with, the safe-keeping, disbursement, investment or payment of any money or fund, or with the safe-keeping, sale, carrying or delivering of any goods, wares, merchandise, produce, lumber or any other property or thing which is the subject of larceny, belonging to or under the care or control of the state, or such municipal or other corporation, or in which the state or such corporation, has an interest, or any factor, carrier, warehouseman, storage, forwarding or commission merchant, or any bailee, executor, administrator, guardian, or any trustee, agent, clerk, attorney, messenger, employee or servant of any private person, corporation, copartnership or association, except apprentices and other persons under the age of sixteen years, who, by virtue of his business or employment, shall have the care, custody or possession of or shall be intrusted with the safe-keeping, disbursement, investment or payment of any money, or shall have the care, custody or possession of or shall be intrusted

with the safe-keeping, carrying, sale or delivery of any goods, wares, merchandise, produce, lumber or any other property or thing which is the subject of larceny, belonging to such other person, corporation, copartnership or association, shall embezzle or fraudulently convert to his own use or to the use of any other person except the owner thereof, or shall take, carry away or secrete, with intent to convert to his own use or to the use of any other person except the owner thereof any such money, fund, goods, wares, merchandise, produce, lumber or or any other property or thing shall be punished, if the money or property so embezzled shall exceed the value of one hundred dollars, by imprisonment in the state prison not more than five years nor less than one year, and if the money or property so embezzled shall not exceed the value of one hundred dollars and shall exceed the value of twenty dollars, by imprisonment in the state prison or county jail not more than one year nor less than six months, or by fine not exceeding two hundred dollars, and if the money or property so embezzled shall not exceed the value of twenty dollars, by imprisonment in the county jail not more than six months or by a fine not exceeding one hundred dollars. Any person who is a member of any copartnership or one of two or more beneficial owners of any property specified in this section or of any property or thing which is the subject of larceny, who shall embezzle or fraudulently convert to his own use or to the use of any other person, except the other members of such copartnership or the other beneficial owners of such property or thing, or who shall take, carry away, or secrete with intent to convert to his own use or to the use of any other person except as aforesaid, any such property or thing shall be punished as provided in this section the same as if he had not been or was not a member of such copartnership or one of such beneficial owners. The offense of embezzlement may be prosecuted and punished in any county in which the person charged had possession of the property or thing alleged to have been embezzled. *Id.* sec. 4418.

#### **False receipts by warehouseman, railroad officer, etc. :**

Any warehouseman, wharfinger, master of a vessel or boat, or any officer, agent or clerk of any railroad, express or transportation company who shall issue any receipt, bill of lading,

voucher or other document to any person purporting to be the owner thereof or as security for any loan or indebtedness for any goods, wares, merchandise, lumber, timber, grain, flour, or other property, produce or commodity unless at the time of issuing the same such property shall have been actually received or shipped according to the terms and meaning of such receipt, bill of lading, voucher or other document so issued, or who shall sell or incumber, ship, transfer or in any manner remove beyond his immediate control any such property so received, contrary to the terms and meaning of such receipt, bill of lading, voucher or other document, without the consent of the holder thereof, or who shall deliver any such property or any part thereof, except to the person holding such receipt, bill of lading, voucher or other document and upon the surrender and cancellation thereof, or in case of any partial delivery of such property, upon the indorsement thereon of such partial delivery, unless required by legal process, or shall issue any second or duplicate receipt or bill of lading for any such property while any former receipt or bill of lading for any such property, or any part thereof shall be outstanding and uncancelled, without writing across the face thereof the word "duplicate," shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year or by fine not exceeding one thousand dollars. *Id.* sec. 4424.

**Receipts, bills of lading, etc., negotiability of holder of warehouse receipts protected—Negotiability of receipts defined :**

Any such receipt, bill of lading, voucher or other document as is mentioned in the preceding section shall be transferable by delivery thereof without indorsement or assignment, and any person to whom the same is so transferred shall be deemed and taken to be the owner of the property therein specified so far as to give validity to any pledge, lien or transfer made or created by such person unless such receipt, bill of lading, voucher or other document shall have the words "not negotiable" plainly written or stamped on the face thereof. And any warehouse receipt issued by any person or persons keeping, running and managing a public warehouse, on goods, wares or merchandise owned by him or them, and which he or they

have, at the time of issuing such warehouse receipt, actually stored in the said warehouse, shall have the same force and effect to protect the owner and holder thereof on any loan or advance of money he may have made on the same, as a warehouse receipt by the keeper and manager of a public warehouse to any other person who brings goods, wares or merchandise to be stored in such public warehouse. *Id.* sec. 4425 as amended by ch. 146, Laws, 1899.

An act to regulate the issuing of warehouse certificates in certain cases.

#### **Who may issue certificates and what they must contain :**

All persons, firms or corporations owning or dealing in grains, seeds or other farm products, or engaged in the business of slaughtering cattle, sheep or hogs, and dealing in the various products therefrom, or buying or selling butter, eggs, cheese, dressed poultry or other similar commodities, who own or control the structures wherein any such business is conducted, or such commodities stored, may issue elevator or warehouse certificates or receipts for any such commodities actually on hand and in store, the property of such person, firm or corporation, and may, by the issue of such certificates, sell, assign, incumber or pledge such commodities. Such certificate or receipt shall contain the date of its issue, the name and address of the person, firm or corporation issuing the same, and the name and address of the party to whom issued, the location of the elevator, warehouse or structure wherein the commodity therein described is stored, the quantity of each commodity mentioned therein, the brands or marks of identification thereon, if any, and shall be signed by the person, firm or corporation issuing the same. Laws of 1899, ch. 251, sec. 1.

#### **Declaration of business, etc., to be filed with register of deeds :**

Before any such person, firm or corporation, except as hereinafter provided, shall be authorized to issue such elevator or warehouse certificates or receipts, he or it, as the case may be, shall file in the office of the register of deeds of the county wherein such elevator, warehouse or other structure is situated, a written declaration which shall contain the name and place

of residence or location of such person, firm or corporation, and shall state that he or it designs keeping or controlling an elevator, warehouse or other structure for the storage and sale of commodities mentioned in the preceding section, and shall contain an accurate description of such elevator, warehouse or other structure, the location thereof, and the name or names of any person, other than the one making such declaration, who has any interest in such elevator, warehouse or structure, or in the land upon which it is situated. Such declaration shall be signed and acknowledged by the party making the same, before some officer authorized to take acknowledgments of deeds, and shall be recorded in the office of the register of deeds for said county. *Id.* sec. 2.

**Certificates to contain record of recording before it conveys title :**

Each certificate or receipt issued by any such person, firm or corporation, under the provisions of this act, shall have printed on the back thereof a statement that the party issuing the same has complied with the requirements of section 2 of this act, giving the book, page and name of the county where the record of such declaration may be found. When such certificate or receipt is so issued and delivered, it shall have the effect of transferring to the holder thereof the title to the commodities therein described or enumerated, and shall thereafter be assignable and transferable by delivery, and such delivery shall transfer to any *bona fide* holder in due course, the title to the commodities therein described or enumerated, against all persons claiming title subsequent to the issuing and delivery of such certificate or receipt. *Id.* sec. 3.

**Certificates to be registered by issuing party :**

All certificates or receipts given under the provisions of this chapter shall be registered by the party issuing them in a book kept for that purpose, showing the date thereof, the number of each, the name of the party to whom issued, the quantities and kinds of commodities enumerated therein, and the brands or other distinguishing marks thereon, if any, which book shall be open to the inspection of any person holding any of the certificates or receipts that may be outstanding and in force, or his agent or attorney, and when any commodity enumerated in

any such certificate is delivered to the holder thereof or it in any other manner becomes inoperative, the fact and date of such delivery or other termination of such liability shall be entered in such register, in connection with the original entry of the issuance thereof. *Id.* sec. 4.

**Property to be in warehouse before certificate is issued :**

No person, firm or corporation shall issue any elevator or warehouse certificates or receipts for any of the commodities mentioned in this chapter, unless such property is actually in the elevator or warehouse, or structure mentioned therein as the place where such commodity is stored, and it shall remain there until otherwise ordered by the lawful holder of such certificate or receipt, subject only to the lien of the warehouseman thereon and his right to enforce the same. No second certificate or receipt shall be issued for the same property, or any part thereof, while any other or prior certificate is outstanding and in force, nor shall any such commodities be sold, incumbered, transferred or removed from such elevator, warehouse or other structure wherein the same was stored at the time such certificate or receipt was issued by the warehouseman or any agent or employee thereof, without the written consent of the holder thereof indorsed thereon. *Id.* sec. 5.

**Damages may be recovered :**

Any one injured by the violation of any of the provisions of this chapter, may recover his actual damages sustained on account thereof, and if willfully done, in addition thereto exemplary damages in any sum not exceeding double the actual damages. *Id.* sec. 6.

**Penalty for destroying certificate :**

Any person who shall willfully alter or destroy any register or certificate or receipt provided for in this chapter, or issue any receipt or certificate without entering or preserving in such book the registered memorandum; or who shall knowingly issue any certificate or receipt herein provided for, when the commodity or commodities therein enumerated are not in fact in the building or buildings it is certified they are in; or shall, with intent to defraud, issue a second or other certificate for any such commodity, for which, or for any part of which,

a former valid certificate or receipt is outstanding and in force; or shall while any valid certificate or receipt for any part of the commodities mentioned in this chapter is outstanding and in force, sell, incumber, ship, transfer or remove from the elevator, warehouse or building where the same is stored, any such certified property, or knowingly permit the same to be done, without the written consent of the holder of such certificate or receipt, or if any person knowingly receives any such property or helps to remove the same, he shall, upon conviction, be punished by fine not exceeding ten thousand dollars, or by imprisonment in the state prison not exceeding five years. *Id.* sec. 7.

**Mingling of grains of equal grade allowed :**

Nothing in this act shall be construed as prohibiting or preventing warehousemen from mingling in common bins, grains or seeds of the same grade, and issuing certificates or receipts therefor, and drawing out and shipping said grain and seeds from said bins, provided that a sufficient quantity of such grain or seeds shall be retained and kept in said bins to represent and satisfy all outstanding receipts or certificates. *Id.* sec. 8.

Nothing in this act shall be construed to affect, interfere with or impair any right of issuing and negotiating warehouse receipts or certificates under any existing law, or under any regulations of any chamber of commerce or board of trade within this state. *Id.* sec. 9.

This act shall take effect and be in force, from and after its passage and publication. Approved April 26, 1899. *Id.* sec. 10.

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NOTE. Corporations may be organized for the purpose of conducting a warehouse business, under chapter 86, Revised Statutes of Wisconsin, 1898.

## DECISIONS AFFECTING WAREHOUSEMEN.

## A.

*Bailment*—When property belongs to another, bailee may refuse to deliver to his bailor—*Express company*—Real owner may recover prior to delivery to consignee.

Where property was delivered to an express company for carriage and delivery, and the consignor was not the true owner thereof, it was *held*, that while the general principle is true that it is the duty of such a company to deliver property personally to the consignee and that it would be liable in case of wrongful delivery, that there are, nevertheless, many exceptions to this rule and one of them is that the true owner of the property may enforce his right to it as against the consignor or consignee of the carrier, or against the bailor or bailee, whenever he sees fit to do so, before its delivery as directed. His right is paramount to the claim of all others, no matter what may be their relations to each other, unless it is lost, or, for the time being suspended, by his own conduct of surrender or estoppel. So also a warehouseman receiving goods for the consignee who had actual possession of them, to be kept for him may, nevertheless, refuse to deliver them if they are the property of another and the latter prohibits their redelivery. *Wells v. American Express Co.*, 55 Wis. 23.

*Same*—Bailee cannot acquire adverse title to his bailor.

Where property intrusted to a bailee was unlawfully seized and sold and the bailee purchased the same, it was *held* that he thereby acquired no title to the property. The rule is that one who has received property from another as his bailee or agent, must restore or account for the property to him from whom he received it. Nor can the bailee recover the amount which he paid at such sale, it not appearing that the owner of the property authorized such payment. *Enos v. Cole*, 53 Wis. 235; *Nudd v. Montanye*, 38 Wis. 511.

*Same*—*Executory contract of—Possession*.

An executory contract of bailment does not give the bailee named in the contract the right of possession in the property;

but such right accrues to the bailee on delivery. *Crosby v. German*, 4 Wis. 373.

*Same—Bailee cannot deny bailor's title.*

A bailee is at all times at liberty to show that his bailor has parted with his interest in the property subsequent to the bailment. But such bailee cannot at law dispute the original title of his bailor. *Nudd v. Montayne*, 38 Wis. 511.

*Same—Prima facie case—Burden of proof—Evidence.*

When the bailment is such that the property is in the exclusive possession of the bailee, away from the bailor, and is returned in a damaged condition, and it is shown that the injury is such as does not ordinarily occur without negligence, the proof of these facts constitutes a *prima facie* case against the bailee and puts him on his defense. In other words, when such a showing is made, the plaintiff has made a *prima facie* case under the rule that the burden is on the party asserting negligence; and the law will then presume negligence to have been the case, and casts upon the defendant the burden of showing the loss did not occur through his negligence, or, if he cannot affirmatively do this that, at least, he exercised a degree of care sufficient to rebut the presumption of it. On the trial of a case for the injury of a horse intrusted to another, the defendant was permitted, against plaintiff's objection, to testify that a certain person had told him that it was an old founder which appeared upon the horse and to drive it home. Although it appeared that the person who told the bailee this had had forty years' experience in the care and handling of horses, it was held that it was clearly error to allow the defendant to testify to this fact as it was an attempt to establish his defense by hearsay evidence. *Hildebrand v. Carroll*, 106 Wis. 324.

*Conversion—Disregard of orders to ship in a certain manner.*

In an action against a warehouseman for the conversion of a quantity of flour, it appeared that the flour was stored in the defendant's warehouse and that a properly authorized agent of the plaintiff instructed the defendant to ship the same *by rail* to a certain point. It further appeared that the defendant disregarded this order and shipped the flour *by steamer* through the lakes, and that the flour was lost while in transit. It was

*held* that the disregard by the defendant of the instruction of the plaintiff to ship the flour by rail constituted a conversion thereof for which the defendant was liable. *Graves et al. v. Smith*, 14 Wis. 5; *Young v. Miles*, 20 Wis. 615.

## B.

### *Ordinary care—Definition.*

A warehouseman is bound to exercise ordinary care and diligence in the safe-keeping of goods intrusted with him. Such care may be said to be that which men of common prudence generally bestow upon their own property similarly situated. *Dimmick v. Milwaukee & St. P. Ry. Co.*, 18 Wis. 471.

*Same—Not liable in the absence of negligence—Burden of proof.*

A warehouseman is not liable for the loss or damage of property intrusted to him, resulting from fire or other causes, in the absence of negligence or fraud on his part. The burden of proof to show such negligence is upon the plaintiff. *Dimmick v. Milwaukee & St. P. Ry. Co.*, 18 Wis. 471; *Whitney v. Chicago & N. Ry. Co.*, 27 Wis. 327; *Lemke v. Chicago, M. & St. P. Ry. Co.*, 39 Wis. 449; *Schmidt v. Chicago & N. Ry. Co.*, 90 Wis. 504.

## I.

### *Commingling of wheat—Subsequent separation—Effect thereof—Replevin.*

Plaintiff stored a large quantity of wheat in a warehouse with the understanding that it might be mingled with other wheat of similar grade. Subsequently the warehouseman sold all of the wheat with the exception of a quantity equal to that owned by the plaintiff. The warehouseman then sold this remaining wheat. On the above stated facts it was *held* that when there remained in the warehouse the quantity of wheat equal to or slightly less than that claimed by the plaintiff that this identical wheat became the plaintiff's property, and that the subsequent sale thereof, by the warehouseman, constituted a conversion and that the plaintiff could recover possession of the wheat in an action of replevin against the purchaser. *Young v. Miles et al.*, 23 Wis. 643. See also same case, 20 Wis. 615.

*Same—Effect of mixture with grain of better quality without bailor's consent.*

It appeared from the evidence that a warehouseman had kept the grain of a depositor in a separate bin but had previously mingled the same with other grain of a superior quality thus enhancing its value. In an action to recover the grain or its value the court instructed the jury that the interest of such depositor immediately attached to the mixture and that he would be entitled to an equal number of bushels thereof. *Easton v. Hodges*, 18 Fed. Rep. 677.

#### M.

##### *Pledge—Requisites.*

To constitute a valid pledge, there must be a transfer of possession to the pledgee, actual or constructive. In the case of a pledge, a lien is created to the existence of which possession is absolutely necessary; in this important respect a pledge differs from a mortgage. In the former the legal title remains in the pledgor while in the latter the title passes to the mortgagee. *Seymour v. Colburn*, 43 Wis. 71; *Geilfuss v. Corrigan*, 95 Wis. 651.

#### Q.

##### *Warehouse receipt—Must be issued by a warehouseman.*

In order that a receipt shall be a warehouse receipt, in this state, it must be issued by one regularly engaged in the business of warehousing. The court will not take judicial notice that one is a warehouseman, but this fact must be proved by the proper evidence. *Shepardson v. Cary, Exec.*, 29 Wis. 34; *Geilfuss v. Corrigan*, 95 Wis. 651.

*Same—Are “negotiable instruments”—Pledged by factor—Pass title to the property—“Factors Act” considered—Effect of notice to vendee or pledgee.*

A factor was intrusted with the possession of warehouse receipts, the property represented thereby belonging to the plaintiff, and had deposited them with the defendant bank as security for the amount which he owed it by having overdrawn his account. The factor subsequently died insolvent and the defendant sold the property represented by the receipts and applied the proceeds toward the account owed it by the factor.

The plaintiff brought this action against the bank on the ground that it was a fraud on the part of the factor to pledge the receipts and that no title had passed thereby. It was *held*, under the Factors Act of this state, that the factor had authority to pledge receipts in his possession and that warehouse receipts were negotiable under the laws of this state as promissory notes or bills of exchange; giving to the holder, under all ordinary circumstances, imperative presumption of title in power of disposal; that a principal voluntarily suffering them to be in the hands of a factor, holds out the factor as owner, with unlimited authority to dispose of them; and that such factor may bind his principal, contrary to his instructions, by pledge of securities negotiable at common law. A factor's sale or pledge of a negotiable warehouse receipt, in violation of his instructions, will not bind his principal, if the vendee or pledgee has notice that the factor holds the title for his principal, and sells or pledges in violation of the principal's instructions. *Price v. The Wisconsin Marine & Fire Ins. Co.*, 43 Wis. 267. See *Victor Sewing Machine Co. v. Heller*, 44 Wis. 265. *Dicta in Hale v. Dock Co.*, 29 Wis. 482, criticised.

*Same—Effect of transfer.*

The execution and delivery, by a warehouseman, of his receipt, carries the vendor's title in constructive possession of the property to the vendee, who, or the party claiming under him, as the holder of the receipt, is thenceforth, in cases free from fraud or bad faith, regarded as the owner of the property for all purposes. The warehouseman becomes the mere bailee for the benefit of the vendee, or other holder of the receipt, and subject to his order and control. The doctrine of *Shepardson v. Greene*, 21 Wis. 546, criticised. *Shepardson v. Cary, Exec.*, 29 Wis. 34; *Price v. Wisconsin, Marine and Fire Ins. Co.*, 43 Wis. 267.

*Same—Same—Effect of description in the receipt—When goods in barrels or sealed packages—Warehouseman not estopped to deny contents.*

It appeared that a warehouseman had given a receipt for certain barrels of "mess pork" by the terms of which receipt they were to be delivered to bearer; it further appeared that

the receipt was afterwards purchased by one entirely in good faith and presented to the warehouseman. It was then shown that the barrels stored did not contain "mess pork" but salt, thereupon the assignee of the receipt refused to receive the same. It was held, on the above stated facts, that the warehouseman was not estopped in cases where goods were enclosed in barrels, or other sealed packages, to deny that their contents were as stated in storage receipts, and further that the tender by the warehouseman of the identical barrels in store exonerated him from further liability. *Hale v. The Milwaukee Dock Co.*, 23 Wis. 276. See same case 29 Wis. 482.

*Same—Extent of negotiability—Object of statute.*

Under the statutes of this state the transfer of a warehouse receipt "by delivery, with or without indorsement thereof," transfers no more than the property in the goods,—it does not transfer the contract. Warehouse receipts and bills of lading do not possess the "negotiable" character of commercial paper. The word "negotiable" as used in the act of 1860, ch. 340 and the amendment sec. 1, ch. 73, Laws of 1863, is evidently not intended to be interpreted in the same manner as when applicable to a bill of exchange. It is intended only to mean the passing of the property in the goods themselves. *Hale et al. v. The Milwaukee Dock Co.*, 29 Wis. 482. But see *Price v. Wisconsin Marine & Fire Ins. Co.*, 43 Wis. 267, in which certain *dicta* in the above case is criticised.

*Same—As collateral security—Not affected by statute relating to chattel mortgages.*

Where a warehouse receipt was pledged as collateral security, it was held that the relations of the parties were not affected by the statute regulating the making and filing of mortgages of personal property. *Shepardson v. Cary, Exec.*, 29 Wis. 34; *Rice v. Cutler*, 17 Wis. 351.

*Same—Same—Must be valid "warehouse receipts."*

In order to validly pledge property represented by a warehouse receipt it must be a receipt issued by a warehouseman and in accordance with the terms of the statute. Where, therefore, one attempted to pledge property represented by "storage

warrants," it was *held* that the pledgee took no title to the property represented thereby as against creditors of the pledgor. *Geilfuss v. Corrigan*, 95 Wis. 651.

*Same—Pledgee may maintain trover.*

Where one holds a warehouse receipt as collateral security, such pledgee may maintain trover against the warehouseman for the recovery of the wheat or its value. *Easton v. Hedges*, 18 Fed. Rep. 677.

*Same—As collateral.*

A bank which received such storage warrants in good faith from a mining company as collateral, but which never had any other possession of the iron than that given by the transfer of the warrants, and never notified the furnace company of its claim thereto, but permitted the latter to dispose of the iron on hand and substitute other iron in its place—acquired no lien on the iron as pledgee as against third persons, even conceding that the title thereto passed to the mining company. *Id.*

*False warehouse receipt—Replevin cannot be maintained by holder of—Evidence.*

Where a warehouseman gave a receipt for wheat which he did not receive, and afterwards the quantity which he actually had was divided amongst the respective depositors, an action of replevin brought by the assignee of the fictitious receipt could not be maintained when, under it, one of those portions was seized. Evidence offered to show that the wheat in question was assigned to the defendant was objected to by the plaintiff in the replevin; but such objection was properly overruled. The plaintiff had shown no title in himself. So also, evidence was admissible to show that the receiver of the fictitious certificate had never deposited any wheat in the warehouse. The defendants in this case were the assignees of the original warehouseman, and were not responsible, unless it could be shown that wheat was deposited, which had come into their possession. *Jackson v. Hale et al.*, 14 How. 525.

## CHAPTER L.

## WYOMING.

## LAWS PERTAINING TO WAREHOUSEMEN.

**Warehousemen not to issue receipts until goods received :**

No warehouseman, wharfinger or other person shall issue any receipt or other voucher for any goods, wares, merchandise, grain or other produce or commodity, to any person or persons, purporting to be the owner or owners thereof, unless such goods, wares, merchandise or other produce or commodity, shall have been *bona fide* received into store by such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt. Revised Statutes, Wyoming, 1899, sec. 5152.

**Not to issue receipts as security unless invested with ownership :**

No warehouseman, wharfinger or other person shall issue any receipt or other voucher upon any goods, wares, merchandise, grain or other produce or commodity, to any person or persons, as security for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity, shall be at the time of issuing such receipt, the property of such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt or other voucher as aforesaid. *Id.* sec. 5153.

**. Not to issue second receipt for same goods :**

No warehouseman, wharfinger or other person, shall issue any second receipt for any goods, wares, merchandise, grain or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncancelled. *Id.* sec. 5154.

**Not to sell or transfer goods without consent of owner :**

No warehouseman, wharfinger or other person shall sell or

incumber, ship, transfer or in any manner remove beyond his immediate control any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt. *Id.* sec. 5155.

#### **Penalty for violating four preceding sections :**

Any warehouseman, wharflinger or other person who shall violate any of the foregoing provisions, relating to warehousemen, shall be deemed a cheat and be subject to indictment and upon conviction shall be fined in any sum not more than one thousand dollars and imprisoned in the penitentiary not more than five years, and all and every person aggrieved may have and maintain an action on the case against the person or persons violating any of the foregoing provisions relating to warehousemen, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under the foregoing sections or not. *Id.* sec. 5156.

#### **Common carriers and warehousemen—Liens :**

Every common carrier of goods or passengers who shall, at the request of the owner of any personal goods, carry, convey, or transport the same from one place to another, and any warehouseman or other person who shall safely keep or store any personal property at the request of the owner or person lawfully in possession thereof, shall, in like manner, have a lien upon all such personal property, for his reasonable charges for the transportation, storage, or keeping thereof, and for all reasonable and proper advances made thereon by him in accordance with the usage and custom of common carriers and warehousemen. *Id.* sec. 2846.

#### **Appointment of appraisers :**

If any such charges for which a lien is given by the preceding sections of this chapter be not paid within thirty days after the same becomes due and payable, the mechanic or other person to whom such lien is given may apply to any justice of the peace of the county wherein the property on which the lien is claimed is, to appoint appraisers to appraise such property.

Such justice shall thereupon appoint by warrant, under his hand, three disinterested householders of the county, to appraise such personal property. *Id.* sec. 2847.

#### **Oath and duty of appraisers :**

The appraisers so appointed shall be sworn by the justice, to well and faithfully appraise and value all such personal property, and shall thereupon proceed to view and appraise the same, and shall return appraisement wherein shall be set down each article separately, to the justice, by whom they were appointed, within ten days after their appointment. *Id.* sec. 2848.

#### **Notice of sale—Sale and application of proceeds :**

After such appraisement is made, the person to whom such lien is given by the foregoing sections of the chapter, shall give ten days prior notice of the time, place, and terms of sale together with a description of the property to be sold. Such notice shall be personally served upon the owner, or the person from whose possession such property was received, if such owner or person reside within the county; if not, by publication in some newspaper published in the county wherein the person attempting to enforce his lien resides (or if there be no such newspaper, then by posting in three public places within such county for at least four weeks), and shall transmit by mail to the owner, at his usual place of abode, if known, a copy of such notice, the notice being personally served, or the service being complete after four weeks, the party claiming a lien may proceed to sell all such personal property, or as much thereof as may be necessary to pay his claim, at public auction, for cash in hand, at any public place within such county, named in such notice, between the hours of ten A. M. and four P. M., of the day appointed; and from the proceeds may pay the reasonable costs of such appraisement, notice, and sale, and his reasonable charges for which he hath his lien. The residue of the property unsold, he shall surrender unto the owner. *Id.* sec. 2849.

#### **Requisites of sale:**

No such sale shall be made for less than two thirds of the appraised value of the article sold, nor except upon due notice, as required by the preceding section. Every such sale

made in violation of the provisions of this section shall be absolutely void. *Id.* sec. 2850.

#### **Lien holders may purchase :**

At any such sale, the person to whom such lien is given, may become the purchaser. *Id.* sec. 2851.

#### **Adjournment—Bill of sale :**

In any case where the property to be sold cannot conveniently be sold in one day, the sale may be continued from day to day, by public outcry, at the place of sale. Upon the completion of such sales, the person to whom the lien is given hereby, shall cause a bill of sale thereof to be filed with the justice of the peace before whom the appraisement was had, in which shall be set down the sum for which each separate article of property was sold, and the name of the purchaser. The justice shall record such bill of sale in his docket, and preserve the original thereof together with the appraisement. *Id.* sec. 2852.

#### **Right of action preserved :**

Nothing herein contained shall be so construed as to take away the right of action of the party to whom such lien is given for his charges, or for any residue thereof at the sale of such property. *Id.* sec. 2853.

#### **Clerk and crier of sale :**

At any such sale, the person to whom such lien is given as herein provided, may appoint a clerk and crier. *Id.* sec. 2854.

#### **Fees of appraisers :**

Appraisers appointed under the provisions of this chapter shall receive three dollars per day; justices of the peace shall receive for each warrant of appraisement twenty cents per one hundred words, and the like fees for recording each bill of sale. Clerks and criers at sales made under the provisions hereof shall receive each three dollars per day. *Id.* sec. 2855.

#### **Chattel mortgages subject to liens :**

No mortgage on personal property shall be valid as against the rights and interests of any person entitled to a lien under the provisions of this chapter. *Id.* sec. 2856.

**Timber liens to be paid pro rata :**

All lien claims for labor performed in cutting or manufacturing railroad cross ties, wood, poles, or lumber, or for doing any labor in reference thereto, shall be concurrent liens upon the same, and shall be paid, *pro rata*, out of the proceeds rising from the sale thereof, if the same shall be sold. *Id.* sec. 2857.

**Identification of property not required in timber liens :**

Persons entitled to a lien for labor performed in cutting or manufacturing any railroad cross ties, wood, poles, or lumber, shall not be required to identify any particular tie or ties, or sticks, poles or boards, but may maintain their lien against any or all of that class of property owned and held by the person or persons from whom their pay for such labor is due, and may seize and sell the same as provided in this chapter. *Id.* sec. 2858.

**When lien not to affect bona fide purchasers :**

No lien upon personal property shall be valid as against an innocent and *bona fide* purchaser unless the person having the right of such lien shall notify said purchaser before he makes payment for such property, of the existence of such lien, in which case the purchaser shall be responsible to the person having such lien claim against said property, for the full amount of his claim, and all legitimate costs and expenses, and payment made on such lien claim shall apply on payment for such personal property. *Id.* sec. 2859.

## DECISIONS AFFECTING WAREHOUSEMEN.

## II.

*Lien—Depositor must be in lawful possession of property.*

By virtue of sec. 2846, Revised Statutes of 1899, any warehouseman or other person is entitled to a lien on property who shall safely keep the same at the request of the owner or of the person lawfully in possession thereof. Where, therefore, it was stipulated between the parties to a suit that the plaintiff was in lawful possession of the property at the time when deposited with the defendant, it was held that the defendant's lien for charges attached under this statute. *Kimball Co. v. Payne et ux.*, 9 Wyo. 441.

*Same—if entitled to storage charges lien attaches—Need not be a “warehouseman.”*

In a case where one stored goods for another which was remanded for a new trial, it was held that if the defendant could show that he was entitled to any charges whatever for his care of the goods that his lien for charges would attach thereto under sec. 1471 of the Revised Statutes, 1887, being sec. 2486 of the Revised Statutes of 1899. It is not necessary that the person earning the storage charges be a warehouseman in the strict technical sense; a company engaged in a general mercantile business may come within its provisions if it has earned storage charges. *Knight et al. v. Beckwith Commercial Co.*, 6 Wyo. 500; *Kimball Co. v. Payne et ux.*, 9 Wyo. 441.



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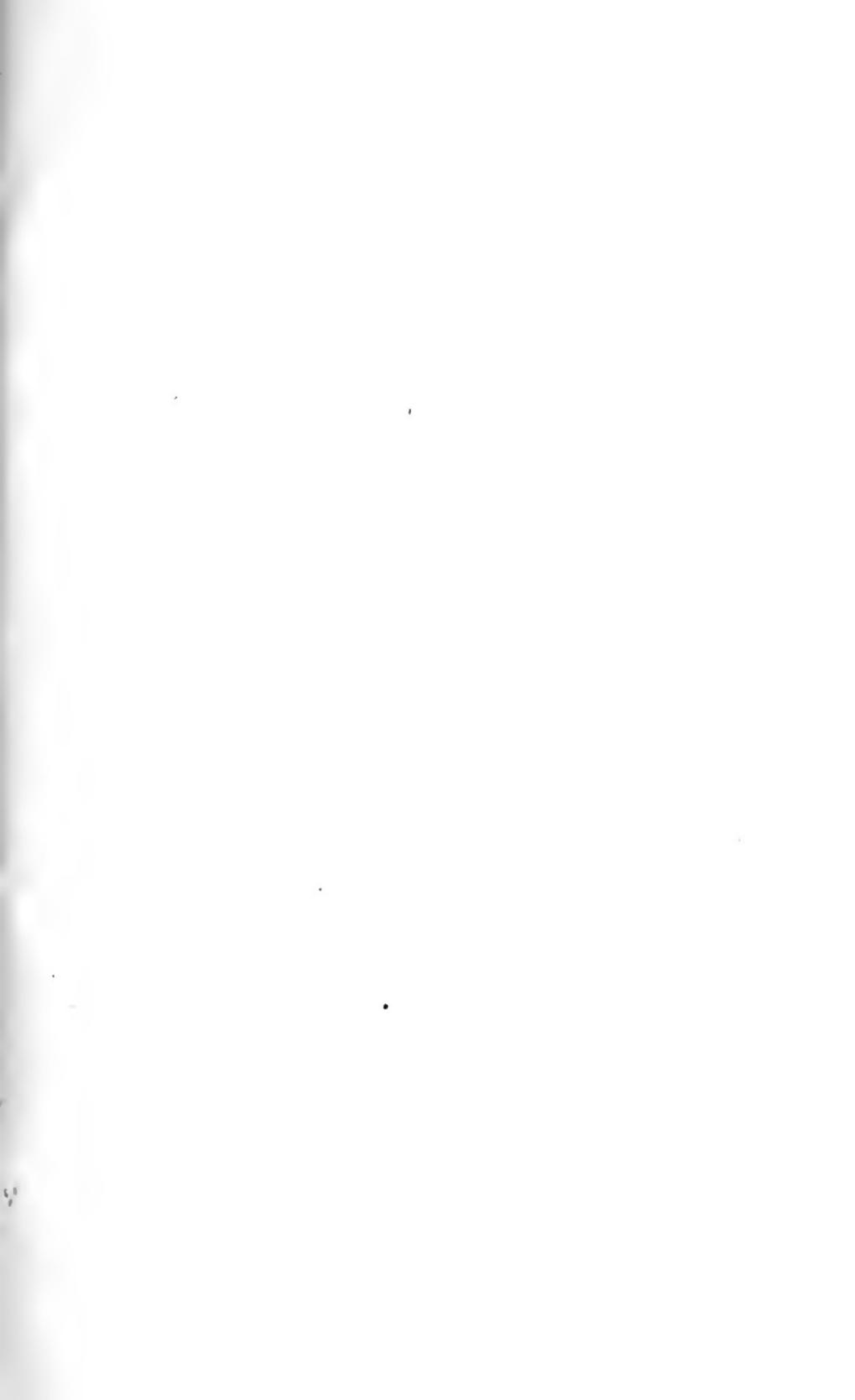
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